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# The Duties and Risks of the Duty-Risk Analysis

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# THE DUTIES AND RISKS OF THE DUTY-RISK ANALYSIS

*Timothy J. McNamara**

Approximately a quarter of a century ago the writer was introduced to the theory and methodology of the duty-risk analysis (and indeed the entire corpus of the law of tort) by the man in whose honor this symposium has been collected and organized. At that time the analysis was an elegant but arcane theoretical construct thought suitable and useful to academicians in the training of young legal minds. But the seed took root, flourished and spread with the energy and impetus of an idea whose time had come. Today, it can be said without exaggeration that one of the prime movers of tort law in Louisiana is the methodology of the duty-risk analysis, as first espoused by Green[1] and then refined, honed, and proselytized by Malone, not only by his numerous influential articles listed elsewhere in this symposium[2] but more importantly by his years of lectures to so many students, now members of both bench and bar.

The purpose of this article is to outline briefly the historical origins of the duty-risk analysis methodology, define its parameters, and trace its development through the jurisprudence of Louisiana over the years. In so doing, the article notes some of the rather deft and imaginative applications of the analysis by the judiciary as it became more familiar with the methodology through repeated application and hence more aware of its inherent versatility. Then, from the admittedly limited view of the practitioner of the law of torts as opposed to that of a jurist or a legal scholar, the writer suggests answers to problems regarding the future development and utilization of the duty-risk analysis, the duties it imposes intellectually, and the risks attending its application.

## THE DUTY-RISK ANALYSIS: ITS ORIGIN AND ELEMENTS

When Oliver Wendell Holmes proclaimed in his usual Jovian manner that "the life of the law has not been logic, it has been experience,"[3] he sounded the rallying cry of the movement toward judicial realism that blossomed in the latter part of the nineteenth century and the early part of the twentieth century in this country. The methodology of the duty-



* Member, Louisiana Bar Association. The writer acknowledges with thanks the help of Paul Gibson, third-year law student at Loyola University School of Law, and Keith Landry, the writer's legal assistant in the preparation of this article and Appendix. The cooperation and patience of the writer's secretary, Susannah Kelley are also gratefully acknowledged.

1. L. GREEN, RATIONALE OF PROXIMATE CAUSE (1927); Green, *The Duty Problem in Negligence Cases*, 28 COLUM. L. REV. 1014 (1928).

2. *See generally* Wade, *Ruminations on a Premier Torts Professor*, 44 LA. L. REV. 1161 (1984).

3. O.W. HOLMES, THE COMMON LAW (1881).

risk analysis is nothing more nor less than the pragmatic progeny of that judicial philosophy. It is the tool by which a philosophical ideal, judicial realism, is implemented in the court room and case law.

One can not judge the efficacy of this methodology as a jurisprudential tool without recalling the condition which it corrected. Because of the complexities of human existence, only a small fraction of human conduct can be regulated by public law (either civil or criminal) or by the private law of contract. The majority of human activity is thus relegated to regulation *via* the law of tort. The basis of any such body of law, which must be broad enough to encompass the almost infinite variety and complexity of human conduct, can not give any specific guidance for a given situation. The common law jurisprudence developed the "reasonable man," against whose conduct all others are measured. In Louisiana, Civil Code articles 2315 and 2316[4] provide the general standard for judging conduct, absent any positive public law or private contract.

Lacking any useful guidelines or parameter, the law of tort would necessarily have to be generated on a step-by-step, case-by-case basis. However, due to various considerations ranging from the theological or philisophical to perhaps even political,[5] the courts in both Louisiana and common law jurisdictions solved this problem by avoiding their true function in enforcing the law of tort. By a rather clever feat of legal *legerdemain*, the courts simply converted a question of law into a question of fact and shifted the responsibility of decision onto the shoulders of the jury. They accomplished this result by developing the doctrine of proximate cause. After instructing the twelve lay jurors that every person is responsible for the damages he occasions, not merely by his act but by his negligence, imprudence or want of skill (in Louisiana),[6] or that an individual is liable for the damages he occasions to his neighbor due to his negligence, *i.e.*, failure to act as a reasonable man (in common law jurisdictions), the court then would further enlighten the members of the jury by telling them that the conduct of the defendant must be the "proximate cause" of the plaintiff's injury. Judicial definitions of the term

4. Civil Code article 2315 provides in part: "Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." Article 2316 provides: "Every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill." Only the congenitally gullible (the analogue of David Robertson's charming character in Robertson, *Reason Versus Rule in Louisiana Tort Law: Dialogues on Hill v. Lundin & Associates, Inc.*, 34 LA. L. REV. 1, 4 (1973)) would accept the proposition that these two articles in and of themselves are words to live by to avoid running afoul of the law of torts in Louisiana.

5. L. GREEN, *supra* note 1; Campbell, *Duty, Fault, and Legal Cause*, 1938 WIS. L. REV. 402; Frank, *What Courts Do in Fact*, 26 Ill. L. REV. 645 (1932); Lewis, *Proximate Cause in Law*, 7 FLA. B.J. 109 (1933). All of these articles at one point or another speculate on the perversity of courts in disguising what their true function was.

6. LA. CIV. CODE arts. 2315 & 2316, quoted *supra* note 4.

*proximate cause* have ranged in variety from the sublime to the ridiculous.[7] For example, the court might give the jury positive guidance about just what constitutes the proximate cause of an injury in tort law by stating: " 'Proximate cause' " means that not only must the negligent act or omission played [sic] a substantial part in bringing about or actually causing the injury or damage, but also that the injury or damage was either a direct result or a reasonable probable consequence of the act or omission."[8] With such edifying comments and directions, the jury would be dismissed to the jury room for deliberations. The court could then sit back and await the jury's verdict. If that verdict pleased both the district judge and appellate reviewing court, then the jury's decision would stand. After enough similar decisions were rendered and allowed to stand on appeal, a "precedent" would evolve. Juries then could be instructed on the specific conduct prohibited by the prior case law. All of this precedent developed without the touch of an identifiable judicial hand or any given probative reason as to why that particular species of conduct by that type of defendant would now and forever more be penalized. Of course, on the other hand, if a decision was not to the court's liking at either the district or the appellate level, the judiciary was not without its own resources to "correct" the jury's errors. Professor Green exposed and denounced this practice as early as 1927 in his amazing work, *The Rationale of Proximate Cause*. Discussing the then prevalent practice of courts employing the concept of proximate cause whenever they faced a case for decision without precedent, he forthrightly declared:

> By reason of this complex process in such cases and by reason of the surface similarities between the judge's primary function and that of the jury, confusion is easily developed. Judges habitually fall into two grave errors in handling cases of this nature. First, they do not recognize that they have a function to perform by way of defining the limits of the rule involved. Second, they place the burden on the jury under the guise of determining "proximate cause." And the stupid part of it all is that the attempt is made to use the "probability of harm" formula, employed to determine negligence, also as a test of this so-called "proximate cause" issue. Frequently a third error is made. It happens in this way: If the result obtained from erroneously leaving the fictitious "cause" issue to the jury is palpably unjust, or if the result of leaving it to the jury would probably be so, the appellate court declares *as a matter of law* that there was in fact no causal relation issue to be left to the jury, and proceeds to

7. For an excellent discussion of the various definitions promulgated at various times or for different circumstances by courts in Louisiana, see Comment, *Proximate Cause in Louisiana*, 16 LA. L. REV. 391 (1956).

8. Brody v. Aetna Casualty & Surety Co., 438 F.2d 1148, 1152 (5th Cir. 1971).

> deal with it as an issue of causation for the court. Here they make use of all those weighted phrases as "remote," "unforeseen," "intervening agencies," "independent agencies," and a score of others which are meaningless as solvents except they provide a smoke screen behind which the court can retire from an awkward position. They do here under the guise of determining "proximate cause" what should have been done by way of defining the scope of protection afforded by the rule invoked.
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> . . . All in all this confused method of dealing with the problem, though widely accepted is a wretched one, inexcusably perpetuated by intelligent judges and utterly devoid of scientific foundation. The law cannot progress in this broad and increasingly important field, the negligence concept cannot be developed to include its legitimate territory, until this error is eradicated root and branch.[9]

As so aptly observed by Professor Malone, "the phrases of proximate cause are little more than gaudy ribbons with which the package of liability may be decorated once its contents have already been fixed by the court through resort to some other mystique."[10] The antidote conceived by Green[11] and refined by Malone[12] was the duty-risk analysis.

## THE METHODOLOGY OF A DUTY-RISK ANALYSIS

The first and most important thing to understand about the methodology of a duty-risk analysis is what it does *not* encompass. The duty-risk inquiry completely divorces the factual question of causation from the process of fixing the legal responsibility for the act. As Green put it:

> Also it is well to understand that it is not important to the causal relation issue that defendant's conduct in whole or in part was lawful, unlawful, intentional, unintentional, negligent, or non-negligent. The moment some moral consideration is introduced into the inquiry the issue is no longer one of causal relation. *Causal relation is a neutral issue, blind to right and wrong.*[13]

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9. L. GREEN, *supra* note 1, at 76-77.

10. Malone, *Ruminations on Dixie Drive It Yourself Versus American Beverage Company*, 30 LA. L. REV. 363, 364 (1970).

11. L. GREEN, *supra* note 1; L. GREEN, JUDGE AND JURY (1930); L. GREEN, THE LITIGATION PROCESS IN TORT LAW: NO PLACE TO STOP IN THE DEVELOPMENT OF TORT LAW (2d ed. 1977).

12. *See, e.g.*, Malone, *supra* note 10; Malone, *Ruminations on Cause-In-Fact*, 9 STAN. L. REV. 10 (1956).

13. Green, *The Causal Relation Issue in Negligence Law*, 60 MICH. L. REV. 543, 549 (1962) (emphasis added).

As Professor Crowe observed:[14]

> Green's strength is that he has split the atom of "proximate cause" which has so plagued effective legal thinking for many years. The very term "proximate cause" connotes simultaneous inquiries of factual causation, on the one hand, and morality, culpability, or responsibility on the other hand. One must solve the questions of factual causation first, without any of the entanglements of morality, culpability, or responsibility. Then and only then, without any of the entanglements of factual causation, can the problems of morality, culpability, or responsibility be resolved.[15]

Embellishing and elucidating upon Green's isolation of the causation issue as one of fact, Professor Malone wrote:

> The determination of cause-in-fact is launched by fixing as precisely as possible the piece of conduct—the exact act or omission—with which the defendant is charged. This item of behavior must be regarded as a cause-in-fact of the harm suffered by the victim whenever the trier concludes that the same harm would probably not have occurred if the defendant had not engaged in the conduct with which he is charged. A cause-in-fact can thus be defined as a *necessary* antecedent, and the process of determining the existence or non-existence of cause is essentially one in which the trier speculates as to what would have happened if the conduct in question had *not* taken place. Since this assumed state of affairs represents a negation of the situation as it actually existed, we can only engage in surmise. The permissible degrees of likelihood are many, and our conjecture may lead us to conclude that the same harmful consequence would have come into being as a certainty, a probability, or a possibility, even if defendant had behaved otherwise than as he actually did behave. It is at this point that the usual and accepted requirement that facts be established by *probabilities* comes into play. If the victim would *probably* not have encountered the harm but for the defendant's conduct, it can be concluded that such conduct was a cause in fact and that the victim has sustained the required burden of proof on that issue.[16]

A word of caution is appropriate at this point. A careful reading of the writings of Green and Malone quoted above reveals that the purpose

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14. William L. Crowe, Sr. is a Professor of Law, Loyola University School of Law, New Orleans, Louisiana; a former Chairman, Tort Compensation Section, Association of American Law Schools; and a former student of Wex Malone.

15. Crowe, *The Anatomy of a Tort—Greenian, as Interpreted by Crowe Who Has Been Influenced by Malone—a Primer*, 22 LOY. L. REV. 903, 904 (1976).

16. Malone, *supra* note 10, at 370.

of the exercise is to determine whether a described piece of conduct of the defendant more probably than not contributed to the plaintiff's harm—nothing more and nothing less. All lawyers are familiar with such concepts as last clear chance, intervening negligence, active and passive negligence and, of course, proximate cause. In considering causation, one must always guard against the subliminal pull of these arcane doctrines which, when coupled with the understandable desire for certainty, combine to complicate the solution of an otherwise relatively simple problem. It is heartening to note that the Louisiana Supreme Court appears to have a firm grasp not only of the limited scope of the cause-in-fact inquiry but also of when that inquiry should be conducted in the course of adjudicating the controversy. In *Dixie Drive It Yourself System v. American Beverage Co.*,[17] the supreme court boldly stated that negligent conduct need only be a substantial factor in bringing about the plaintiff's harm in order to qualify as a cause in fact.[18] In another case decided shortly after *Dixie Drive It Yourself*, the court further explained its conception of cause in fact:

> It is fundamental that negligence is not actionable unless it is a cause in fact of the harm for which recovery is sought. It need not, of course, be the sole cause. Negligence is a cause in fact of a harm to another if it was a substantial factor in bringing about that harm. Under the circumstances of the instant case, the excessive speed was undoubtedly a substantial factor in bringing about the collision if the collision would not have occurred without it. On the other hand, if the collision would have occurred irrespective of such negligence, then it was not a substantial factor.[19]

The supreme court seems well aware that the order of business in adjudicating a tort controversy is to resolve the cause-in-fact issue before attacking the meatier and usually more complicated issue of fixing legal responsibility.[20] If the plaintiff fails to prove by a preponderance of the evidence that more probably than not the defendant's conduct was a cause-in-fact of the plaintiff's harm, that is the end of the inquiry.

As a practical matter, the plaintiff's case will seldom fail to pass muster on the issue of causation if the litigation progresses to trial on the merits, particularly where the trier of fact is a jury. In the real world

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17. 242 La. 471, 137 So. 2d 298 (1962).

18. 242 La. at 482, 137 So. 2d at 302.

19. Perkins v. Texas & N.O. R.R., 243 La. 829, 835, 147 So. 2d 646, 648 (1962) (footnotes omitted). *See also* Hill v. Lundin Assocs., Inc., 260 La. 542, 547, 256 So. 2d 620, 622 (1972) (stating that to the extent the defendant's act had something to do with the harm sustained by the plaintiff, it met the test of a factual, causal relationship).

20. Hill v. Lundin & Assocs., Inc., 260 La. 542, 547, 256 So. 2d 620, 622 (1972); Pierre v. Allstate Ins. Co., 257 La. 471, 242 So. 2d 821 (1970).

of litigation, claims with a weak factual basis seldom progress even to the point of filing of suit, much less to the stage of trial on the merits. In such cases, the merits or lack thereof are quickly perceived by counsel for plaintiff and disposed of expeditiously by either a nominal settlement or a refusal to undertake the case.

## DUTY-RISK ANALYSIS

In his customarily lucid and penetrating manner, Professor Green wrote: "Phrased in terms of requisites, a tort comprehends: (1) An interest protected, (2) against the particular hazard encountered, (3) by some rule of law, (4) which the defendant's conduct violated, (5) thereby causing, (6) damages to the plaintiff."[21] In the methodology of duty-risk, requisite five is the issue addressed first in the analysis of any alleged tort and is disposed of independently *via* the cause-in-fact determination discussed above. The absence of one of these requisites destroys the proposition that any tort occurred; thus, as discussed previously, the absence of a cause-in-fact relationship between defendant's conduct and plaintiff's alleged damages ends the inquiry. Requisite six, obviously a pure fact question, is beyond the scope of this article. Thus, four elements necessary for the imposition of tort liability are still to be considered.

To borrow and expand upon Professor Crowe's analogy, the elegance of the methodology of duty-risk is that it splits the atom not once but twice. It first isolates for step one requisite five, causation in fact. Then it again divides the analytical procedure by separating requisite four, that the particular defendant was guilty of substandard conduct, from step three of the methodology. Thus, only requisites one through three are considered at the second stage of the analytical procedure. These three requisites thus isolated present a pure question of law: Does a rule of law protect the interest of this plaintiff against the particular hazard encountered? How the whole process came to be known by the rubric "duty-risk analysis" is apparent; stated in the sparest terms, the issue is whether the defendant owes a legal duty to the plaintiff and, if so, whether the duty extends to the particular risk encountered by this particular plaintiff.

Fortunately, renowned legal writers[22] have identified the factors which courts should consider when making the duty-risk determination. The general consensus is that six identifiable socioeconomic considerations influence the decision of whether the defendant owed a legal duty to a particular plaintiff not to create this specific risk of harm by the precise conduct which the court has already concluded was *a* cause in fact of the

21. L. GREEN, *supra* note 1, at 3-4.

22. *See* L. GREEN, *supra* note 1; Crowe, *supra* note 15; Johnson, *Comparative Negligence and the Duty/Risk Analysis*, 40 LA. L. REV. 319 (1980); Malone, *supra* note 10; Robertson, *supra* note 4; Comment, *supra* note 7.

plaintiff's injuries. Obviously, there is interplay among these factors as the judge ponders his decision. As a practitioner, the writer wishes that every judge would tape these six considerations to his wrist like a quarterback so that, when he has a visceral feeling as to who should win, he can at least check off each of these elements to determine exactly why he approves the position of one side or another and at the same time make sure he has not overlooked an important consideration. These six factors are: (1) ease of association, (2) administrative considerations, (3) economic considerations, (4) moral considerations, (5) type of activity, and (6) precedent or historical considerations.[23] For purposes of completeness only, a brief discussion of each of these elements or factors is in order.

First and foremost and, in the writer's opinion as a practitioner, most effective is ease of association: Is the harm which befell the plaintiff easily associated with the type of conduct engaged in by the defendant? Obviously, foreseeability plays a part in this determination in the sense that, whenever the type of harm suffered by the plaintiff is a predictable consequence of the conduct of the defendant if things go awry, then the term *foreseeable* is applicable. However, one should not confuse the foreseeability of harm by this defendant to this plaintiff (which is a specific factual question) with the ease of association factor. Foreseeability in the ease of association factor is a question of law which asks whether the injury is easily associated with the activity, not whether the defendant should have foreseen the plaintiff's injury. In short, it is necessary to divorce the defendant in his particular circumstances from the actual conduct he engaged in. It is the association of the *conduct* with the harm that is relevant, rather than that of the *defendant* with the harm.

The administrative factor is simply a policy decision by the court as to whether imposition of a duty on this defendant would result in a plethora of time-consuming and costly litigation just to make one plaintiff whole. The extreme caution and restrictive attitude of the courts with respect to who can bring a claim for mental distress for injury to another is one example of the potency of this element.

The economic factor speaks for itself. However, again it should be cautioned that this factor is not merely an inquiry of who has the deepest pocket in this particular case, no matter how elegantly one may state the proposition. The adjudicator must avoid allowing a factual determination of who of the litigants before him is best able to bear the loss to answer the economic factor inquiry. To do otherwise is to permit the factual con-

23. It is submitted that if you add the following seventh element, Green's definition becomes a thumbnail description of all the elements of a tort lawsuit: (7) Is there a valid defense in fact or law available to the defendant which will either bar plaintiff's claim or mitigate his damages?

siderations of this particular case to creep into the policy decision. The economic factor should be a determination of which litigant can best effectively distribute the loss, considering the impact of not imposing the legal duty on the defendant on plaintiffs similarly situated, and the impact of a decision in favor of the plaintiff, not only on the defendant, but on all parties of the same class and the consequent impact on the industry, community, and perhaps the economies of the state and nation.

The moral factor is just that. In the experience of this practitioner, judges, like juries, are on the lookout for the guy with the black hat. Woe betide the wearer, be he plaintiff or defendant, if the court can find a way to prevent him from using the judicial process to further his nefarious ends.

The type of activity factor is somewhat akin to the moral factor. When the type of activity engaged in by the defendant is of little or no social consequence and particularly when it is reprehensible, the court tends to cast a baleful eye in the defendant's direction. Similarly, some activities are so fraught with danger of injuries to others that the court decides that liability should be imposed whenever a defendant engaged in such an activity does in fact cause provable damage to a plaintiff. Examples of such activities are pile driving and blasting.

Finally, there is the historical or precedent factor. The obvious example is the citation of a large number of cases which are similar in reasoning to the proposition before the court. When this factor comes into play, however, the court, while often looking to the past and present for guidance, can also look into the future. Like Janus it should look in both directions. For instance, have conditions in society so changed that the precedent set in another day in another context is no longer valid? Do the later cases indicate a trend away from the rule relied upon by one side or the other and towards a new rule of law regarding the conduct in question? What precedent will the adjudicator set by deciding in favor of one or the other litigants with regard to future litigation? These considerations are all part of the historical or precedent factor in rule-making.

At this point, it may be well for the reader to pause and get his bearings. Referring back to the six requisites of a tort, recall that step one of the methodology, the cause-in-fact determination, disposes of requisite 5. Step two of the methodology, the application of the duty-risk analysis in order to determine a pure question of law, disposes of requisites one, two, and three. Pretermitting the obvious factual issue encompassed in requisite six, the damages to the plaintiff, only requisite four—that the defendant's conduct was indeed tortious—remains to be disposed of by step three of the methodology. In strict liability cases this fourth requisite is simply skipped over. The adjudicator moves on to the question of the defendant's possible defenses, victim fault, fault of a third party, and irresistible force, and then on to damages if necessary. Likewise, in cases

of intentional tort, this step of the methodology is a given in almost all instances. However, in most tort cases, grounded as they are in negligence, the third step of the methodology is indeed needed.

In this step of the duty-risk methodology, the factual issue is whether or not this particular defendant acted unreasonably. To the thoughtful this is obviously not as clear a fact question as the determination of cause in fact,[24] for it brings into play for the trier of fact in almost all cases the doctrine of the mythical "reasonable" man. The trier of fact draws upon past experience, common sense, and any other subjective experience and knowledge to create a standard of conduct which the reasonable man, as constructed by *this* trier of fact, would have adhered to. He then reviews the evidence to see whether the actual defendant at bar measures up. However, in jury cases the trier of fact should be given more concrete guidelines than the mythical reasonable man standard. The writers in this field have identified the prime elements for consideration by the trier of fact: (1) the likelihood of the harm, (2) the gravity of the harm, (3) the burden of prevention, and (4) the social utility of the defendant's conduct.

Based on years of practice, the writer has found that there seldom is serious controversy over the existence of four of the six requisites for a tort described by Green. Usually the fight centers on requisite four, whether the defendant violated his duty to the plaintiff, or requisite six, the amount of damages suffered by the plaintiff, not to mention a seventh element, the validity of the defendant's defenses. It has been the writer's experience that both bench and bar could use their time profitably in applying to every case the methodology of the duty-risk analysis with its three-step process. Use of this analysis may reveal the presence or absence of a requisite which has been hidden behind a controversy regarding other requisites.

### THE DEVELOPMENT OF THE METHODOLOGY IN THE JURISPRUDENCE

The Appendix to this article contains over two hundred cases from the appellate courts of Louisiana from around 1962 to date in which the courts with varying degrees of success and expertise employed the methodology of duty-risk rather than the doctrine of proximate cause. Commencing in 1962 with the benchmark case, *Dixie Drive It Yourself*,[25] the trickle of opinions in tort cases employing this methodology turned into a flood as the judiciary became more familiar with this bold new concept. Because of its inherent flexibility, the duty-risk methodology has virtually supplanted the doctrine of proximate cause as the prime decision-

24. For purposes of this article, the writer will forego the nice underlying issue that determination of cause in fact begins with a selection between competing philosophies of what is cause and what is effect.

25. Dixie Drive It Yourself System v. American Beverage Co., 242 La. 471, 137 So. 2d 298 (1962).

making tool employed by this state's judiciary in the field of tort law. Over the years, the writer has closely observed this development with the eye of the practitioner, as opposed to the sharper, more penetrating gaze of the legal academician. Time, space and native ability prohibit a discourse on every case significantly contributing to the growth and development of the duty-risk analysis in Louisiana jurisprudence. What is attempted here is an analysis of those cases which struck the writer as significant from the standpoint of the practitioner. To those who may quarrel with the inclusion or exclusion of certain cases, the reply is that the chosen cases are those considered by the writer and other practitioners to be most significant to the growth and development of the duty-risk analysis in the jurisprudence.

As long ago as 1927, Professor Green puzzled over the paradox that whenever the plaintiff relied on a statute as the rule of law, the courts were quite open to considering innumerable factors in deciding whether the statute was designed to protect against the hazard encountered by the plaintiff due to the defendant's conduct. Yet, when faced with a case based upon a non-statutory or common law rule, candor and clarity disappeared within the shell of proximate cause.[26] It is therefore unsurprising and indeed quite proper that in the landmark decision, *Dixie Drive It Yourself*, the supreme court, in first applying this methodology, cautiously selected a case involving a statute which clearly defined proscribed conduct, leaving open only the question of whether the plaintiff's interest was protected against the particular hazard encountered.[27]

In *Dixie Drive It Yourself*, an American Beverage Company truck became disabled on the main travel portions of the highway. In contravention of Louisiana Revised Statutes 32:369,[28] requiring a display of red signal flags for a vehicle stopped on the travel portions of a highway, American Beverage's driver simply did not put them out. The lessee of plaintiff's truck negligently failed to observe the defendant's vehicle, with the resultant damage to the plaintiff-lessor's truck. One gathers from an analysis of the opinion that the main impetus behind the supreme court's reversal of the lower court's judgment dismissing the claim of Dixie on the grounds that the defendant's negligence was "passive" was to put an end to a game of juridical musical chairs that had developed in the lower courts. As Justice Sanders remarked of the lower court's employment of the doctrine of proximate cause and intervening negligence as a means of dismissing the plaintiff's claim, "[t]he thrust of this formulation of law is toward relieving all but the last wrongdoer of liability to an innocent victim in torts involving intervening negligence."[29]

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26. L. GREEN, *supra* note 1, at 40-41.
27. *Id.* at 3.
28. (1963).
29. 242 La. at 488, 137 So. 2d at 304.

Justice Sanders quickly disposed of requisites three and four by finding the statute to be the rule of law and finding as a matter of fact that defendant's employee violated that statute by remaining in the truck and failing to display the red signal flags. Utilizing the methodology of duty-risk, he quickly isolated the real controversies as being centered on requisite five (cause in fact) and requisites one and two (whether the plaintiff's interest was protected against the particular hazard encountered). "In the instant case it bifurcates into two distinct inquiries: whether the negligence of the obstructing driver was a cause-in-fact of the collision; and whether the defendants should be relieved of liability because of the intervening negligence of the driver of the Dixie truck."[30] Then, proceeding exactly in the fashion prescribed by the methodology, he began with step one and disposed of the cause-in-fact problem. "It is clear that more than one legally responsible cause can, and frequently does, contribute to a vehicular collision. Negligent conduct is a cause-in-fact of harm to another if it was a substantial factor in bringing about that harm."[31] Further on in the opinion Justice Sanders remarked:

> We can reasonably infer that the collision would not have occurred if the statutory precautions to protect approaching traffic had been taken. The mere possibility that the accident would have occurred despite the required precautions does not break the chain of causation.
>
> We conclude that the negligence of the obstructing driver was a substantial factor in bringing about the collision, or a cause-in-fact.[32]

Having thus found requisite five to be present, and since requisites three and four were a given (defendant's conduct was clearly substandard and in violation of the statute), he then proceeded to step two, the application of a duty-risk analysis. All he was seeking to assertain was whether requisites one and two were present.

> The essence of the present inquiry is whether the risk and harm encountered by the plaintiff fall within the scope of the protection of the statute. It is a hazard problem. Specifically, it involves a determination of whether the statutory duty of displaying signal flags and responsibility for protecting traffic were designed, at least in part, to afford protection to the class of claimants of which plaintiff is a member from the hazard of confused or inattentive drivers colliding with stationary vehicles on the highway.[33]

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30. 242 La. at 481-82, 137 So. 2d at 302.
31. 242 La. at 482, 137 So. 2d at 302.
32. 242 La. at 487, 137 So. 2d at 304.
33. 242 La. at 488, 137 So. 2d at 304.

The court cited *Maggiore v. Laundry & Dry Cleaning Service*,[34] an older opinion written by a very good judge, Judge Janvier. It is submitted that in *Dixie Drive It Yourself*, the factor which carried the day for the plaintiff was the historical or precedent factor. After citing the *Maggiore* case, as well as others, plus an excellent law review article,[35] Justice Sanders concluded:

> The objective of the statutory provisions violated in the instant case was to protect against the likelihood that an oncoming motorist, whether cautious, confused or inattentive, would fail to timely perceive the vehicle or that it was stationary and become involved in an accident. The law was designed to protect the plaintiff (and any member of its class) against such an accident as occurred in this case.[36]

To his everlasting credit, not only did Justice Sanders employ the methodology of the duty-risk analysis precisely as it was intended to be applied, but he also went one step further and openly criticized the doctrine of proximate cause and pinpointed its weakness and failures. "As employed by courts, proximate cause is a legal concept without fixed content. It is used indiscriminately to refer to cause-in-fact, the scope of liability, and other negligence factors."[37] Justice Sanders perceived exactly what has been suggested: The doctrine of proximate cause is a factual determination inside a legal determination disguised in another factual determination.[38]

Three years after *Dixie Drive It Yourself*, the third circuit made a quantum leap towards the adoption of the duty-risk analysis when it decided *Dartez v. City of Sulphur*,[39] as elegant an application of this methodology as has been written before or since. *Dartez* was a suit by a pedestrian against a municipality to recover on the basis of a hazardous sidewalk defect for personal (very personal) injuries sustained when he fell across a bent parking meter post after first tripping over a piece of baling wire on the sidewalk. Following the methodology perfectly, Judge Tate disposed of the cause-in-fact problem by stating that the bent parking meter post was undoubtedly a cause-in-fact of the plaintiff's injuries because it, along with the baling wire, was a substantial factor in producing them. Having disposed of that issue by step one of the process, he then moved to step two. Applying the duty-risk analysis, he quickly deter-

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34. 50 So. 394 (La. App. Orl. 1933).
35. Comment, *supra* note 7.
36. 242 La. at 492, 137 So. 2d at 307.
37. 242 La. at 494-95, 137 So. 2d at 307.
38. For a more penetrating analysis of this case, see Malone, *supra* note 10.
39. 179 So. 2d 482 (La. App. 3d Cir.1965).

mined that there was no serious controversy with regard to requisites one and three. Citing jurisprudence to support his position (again the historical or precedent factor), Judge Tate found that the city was under a duty to maintain its sidewalk free of trap-like hazards. In doing so he stated: "The purpose of the duty thus is to prevent injuries to pedestrians who might fall over this knee-high obstacle in their path if unable reasonably to observe or appreciate the hazard so created."[40] But, utilizing the duty-risk analysis, Judge Tate identified the fatal flaw in the plaintiff's case, the absence of requisite two, by stating:

> [T]he duty to remove the bent post from travel lanes existed in order to prevent injury to those who might proceed into it unaware of its existence; not to prevent injury to those who fully aware of it might nevertheless happen to fall upon it.
>
> That is, the plaintiff's injuries resulted because when he fell the bent post happened to be in his way. The duty imposed upon the city not to obstruct the walkway by the bent pole did not include within its scope the protection of those who might need the space occupied by the bent pole in order to fall free of it and thus to hit the sidewalk instead . . . .[41]

To put it another way, Judge Tate found that the plaintiff's interest was not protected against the particular hazard encountered. Thus, although the defendant's conduct violated a rule of law against municipalities maintaining hazardous sidewalks, a rule which was designed to protect the interest of pedestrians such as the plaintiff, the court found that the rule was not designed to protect against the particular hazard encountered by this particular pedestrian. Not until 1972 did another opinion so expertly use the methodology of the duty-risk analysis to dissect an otherwise potentially confusing case.[42]

In the writer's opinion, three cases very similar on their facts and issues, and decided in the span of as many years by the supreme court, signaled the turning of the tide irrevocably away from the doctrine of proximate cause and towards the methodology of a duty-risk analysis. *Rowe v. Travelers Insurance Co.*[43] is interesting only because of its striking factual similarity to the other two cases and the manner in which the supreme court disposed of the issues raised by those facts. In *Rowe* the plaintiff's automobile was struck in the rear by a truck. The plaintiff's car was parked partially on the highway at night. The left rear cor-

40. *Id.* at 485.
41. *Id.*
42. *See* Hill v. Lundin & Assocs., Inc., 260 La. 542, 256 So. 2d 620 (1972).
43. 253 La. 659, 219 So. 2d 486 (1969).

ner of the vehicle encroached slightly upon the highway in contravention of Louisiana Revised Statutes 32:141,[44] which prohibits stopping on a traveled portion of the road. The court of appeal found that both the motorist and the truck driver were negligent,[45] but that the truck driver's negligence was not the proximate cause of the accident. It thus dismissed the claim of the motorist and awarded judgment against her in favor of the truck driver and the owner of the truck. The supreme court came to exactly the opposite conclusion using exactly the same reasoning. Noting that there was no oncoming traffic, that the truck driver had room to swerve around the slightly encroaching vehicle, that the lights on the plaintiff's vehicle were burning, and that one of plaintiff's passengers attempted to flag the driver down, but that the truck driver did not observe plaintiff's vehicle until he was only thirty feet from it, Justice Barham disposed of the case by using the rubric of proximate cause.

> Coe obviously was negligent in failing to observe the lighted, parked vehicle until he was thirty feet or less from its rear. He should have observed the lighted car under the circumstances at a considerable distance, in time to move sufficiently to his left on the unobstructed portion of the highway and avoid the collision. Although Mrs. Rowe did not remove her vehicle entirely off the highway Coe has failed to establish that this constituted negligence which was a proximate or contributing cause of the accident. The sole and the proximate cause of this collision was the failure of Coe to observe what he could and should have observed.[46]

Nowhere does the opinion refer to *Dixie Drive It Yourself*. At that point, one could have almost concluded that *Dixie Drive It Yourself* was a judicial aberration.

However, approximately a year later the court dramatically steered a course away from proximate cause and towards the duty-risk methodology. In *Pierre v. Allstate Insurance Co.*,[47] the plaintiffs' decedent was a guest passenger in a pickup truck which was forced to come to a stop because the defendant obstructed the roadway by parking his automobile on it in contravention of the very same statute violated in *Rowe*. While waiting for oncoming traffic to clear, the pickup truck was struck from the rear by a dump truck, causing the plaintiffs' decedent to be propelled from the passenger compartment and then run over. After settling with the dump truck driver, the survivors of the decedent sued the defendant, who had left his unattended vehicle parked partially in the roadway. The district court dismissed the claim under the doctrine

44. (1963).
45. Rowe v. Travelers Ins. Co., 208 So. 2d 39 (La. App. 3d Cir. 1968).
46. 253 La. at 667-68, 219 So. 2d at 489.
47. 257 La. 471, 242 So. 2d 821 (1970).

of proximate cause, finding that the dump truck driver's negligence was the sole proximate cause of the accident. The court of appeal affirmed, utilizing the same reasoning and holding that the defendant's negligence in illegally parking the car was too remote to be a cause in fact of the collision. The supreme court first affirmed the judgment of both lower courts, again employing the rubric of proximate cause to explain this decision and citing the *Rowe* case as precedent. On rehearing, however, the court reversed itself in a four-three decision, with Justice Barham writing for the majority. In doing so, the court abandoned the doctrine of proximate cause and switched to the duty-risk methodology. As in *Dixie Drive It Yourself*, the court's problem was somewhat simplified because requisite three, the rule of law, was easily at hand, and there was no question that requisite four was present since the defendant's conduct clearly violated that rule of law. Tracking the methodology perfectly, Justice Barham began with step one, the determination of causation in fact, and quickly demonstrated that the issue which had confounded both lower courts, who had dealt with it in terms of proximate cause, was really no issue at all, since clearly the defendant's obstructing the highway was a contributing cause in fact of the accident.[48] Justice Barham then moved to step two and quickly dissected the problem as legal, not factual, in nature by the application of the duty-risk analysis. Referring to the statute as setting the duty owed by the defendant to the plaintiff, Justice Barham noted:

> The exact risk anticipated by the statutes came into being in this case because the Chrysler was left in such a position that there was insufficient room remaining for vehiclar passage on the highway.
>
> . . . [W]e must decide whether plaintiffs' father was killed because he was subjected by this act of the defendant's insured to a risk sought to be avoided by imposition of that duty.[49]

The court not only utilized the duty-risk methodology but explained in a footnote and in a statement in the opinion exactly what it was doing, after finding that *Dixie Drive It Yourself* was indistinguishable from the facts of this case.

The keys for the solution of the issue of responsibility when there

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48. 257 La. at 491, 242 So. 2d at 828. In one deft stroke Justice Barham displayed that this was a false issue by noting:

> Although it may be said that a vehicle stopped in the position of the pickup truck for any reason at the time of the accident would have been struck by the dump truck, the fact is that it was the obstructing Chrysler which caused the pickup truck to be stopped in a hazardous position, and any hypothetical factual situation is of no concern here.

257 La. at 490-91, 242 So. 2d at 828.

49. 257 La. at 494-95, 242 So. 2d at 830.

> is more than one cause-in-fact of damages are (1) a determination of the exact risk or risks anticipated by imposition of the legal duty which has been breached and (2) the legal or policy considerations which grant excuses from certain consequences which follow an act of negligence. This requires, under the facts and the law of each case and the attendant exigencies a jurisprudential determination which will implement and make effective our broad codal provisions concerning those who should respond in damages for their faults.
>
> We reaffirm the approach used in *Dixie Drive It Yourself* . . . and conclude that under that approach, as here demonstrated, the plaintiffs are entitled to recover.[50]

By the time the court reached the last of the trilogy of cases involving similar facts and issues, *Laird v. Travelers Insurance Co.*,[51] the duty-risk methodology was firmly entrenched. Justice Barham authored the opinion. In *Laird*, the plaintiff stopped his pickup truck so that it slightly encroached upon the main travel portions of the highway. It was parked technically in contravention of the same statute involved in both *Rowe* and *Pierre*. Unlike the stopped vehicle involved in the *Pierre* case, the vehicles in both *Rowe* and *Laird* were only in technical violation of the statute and did not substantially obstruct the travel lane. Further, unlike the automobile in the *Pierre* case, these vehicles were not unattended and were well lighted, and the overtaking vehicles in both *Rowe* and *Laird* which eventually collided with the stopped vehicles ignored attempts to flag them down beforehand. While the result ultimately reached by the court in *Laird* was exactly the same result reached by that court in *Rowe* (indeed with the opinion written by the same Justice), the methodology employed to achieve that result was entirely different. In short, the two cases have the same facts, the same statute, the same Justice, and the same result. The court outlined the order in which it would approach the different determinations to be made in applying the duty-risk methodology. "[W]e must determine whether his act was a cause-in-fact of the accident, what was the nature of the duty imposed upon him, what risks were encompassed within that duty, and whether under the combination of these considerations he should be declared negligent."[52] Indeed, the court recognized the difference in methodology employed and even gave its reason for the switch when it made the following statement.

> The facts and circumstances of this case are not analogous to, and may be differentiated from, those of *Dixie Drive It Yourself* . . . and *Pierre*. . . . The facts in this case are analogous, except

50. 257 La. at 499, 242 So. 2d at 831 (emphasis added).
51. 263 La. 199, 267 So. 2d 714 (1972).
52. 263 La. at 209, 267 So. 2d at 717.

> for slight differences of time, place, and such incidentals, to those of *Rowe*. . . . This court's approach in *Rowe* under "proximate cause" was different from that used in *Dixie, Pierre*, and [*Laird*], the present case. The result in *Rowe*, however, would have been the same under the approach of these cases, which we think expresses more clearly, simply, and logically the rationale of the result. This court said in *Dixie*: ". . . This [case reconciliation] is rendered difficult by the ambiguity of the language of proximate cause. As employed by courts, proximate cause is a legal concept without fixed content. It is used indiscriminately to refer to cause-in-fact, the scope of liability, and other negligence factors."[53]

It is submitted that *Laird* clearly signaled to both bench and bar that the supreme court at least had made a conscious decision to abandon the doctrine of proximate cause in favor of the duty-risk methodology. This conclusion is supported by the earlier decision that same year by the supreme court in *Hill v. Lundin & Associates, Inc.*[54] *Hill* was significant for a number of reasons. First, to the writer's knowledge, it was the first case since the *Dartez* decision in 1965 to decide a pure tort action utilizing the duty-risk methodology without a specific statute to supply requisite three, a specific rule of law, to make the analysis somewhat easier. It certainly was the first time that the Louisiana Supreme Court took off the training wheels, so to speak, and employed this methodology to its fullest. Indeed, the court itself recognized this difference when it pronounced one of the most profound policy statements ever made by it on this subject.

> Where the rule of law upon which a plaintiff relies for imposing a duty is based upon a statute, the court attempts to interpret legislative intent as to the risk contemplated by the legal duty, which is often a resort to the court's own judgment of the scope of protection intended by the Legislature. . . . Where the rule of law is jurisprudential and the court is without the aid of legislative intent, the process of determining the risk encompassed within the rule of law is nevertheless similar. . . . The same policy considerations which would motivate a legislative body to impose duties to protect from certain risks are applied by the court in making its determination. "All rules of conduct, irrespective of whether they are the product of a legislature or are a part of the fabric of the court-made law of negligence, exist for purposes.

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53. 263 La. at 211-12, 267 So. 2d at 718 (emphasis added; citation omitted) (quoting *Dixie Drive It Yourself*, 242 La. at 494-95, 137 So. 2d at 307). The court cited Cole, *Windfall and Probability: A Study of "Cause" in Negligence Law*, 52 CALIF. L. REV. 459 (1964); Green, *Duties, Risks Causation Doctrines*, 41 TEX. L. REV. 42 (1962); Malone, *supra* note 10.

54. 260 La. 542, 256 So. 2d 620 (1972).

> They are designed to protect *some* persons under *some* circumstances against *some* risks. Seldom does a rule protect every victim against every risk that may befall him, merely because it is shown that the violation of the rule played a part in producing the injury. The task of defining the proper reach or thrust of a rule in its policy aspects is one that must be undertaken by the court in each case as it arises. How appropriate is the rule to the facts of this controversy? This is a question that the court cannot escape."[55]

*Hill* was a suit by a maid against her employer and a contractor for injuries sustained when she tripped and fell over a ladder which the contractor had left standing upright on the employer's premises some two to three days earlier. When she tripped over it, the ladder was lying on the ground. The court held that the contractor who had left the ladder standing against the house following completion of work was under no duty to protect the maid, who was employed by the owner of the house, from the risk of tripping over the ladder after a third party had placed the ladder on the ground. Therefore, the contractor's leaving the ladder upright did not constitute negligence in the absence of evidence that it could have reasonably been anticipated that a third person would move the ladder and put it in the position which created the risk. The court reached that conclusion after a classic exposition and demonstration of how the duty-risk methodology should be applied.[56]

The writer respectfully submits that if 1962 was the year that the duty-risk methodology was introduced into the jurisprudence by *Dixie Drive It Yourself*, then 1972 should be recognized as the year that it gained ascendancy once and for all over the doctrine of proximate cause. As can be seen from the Appendix, thereafter the tide of decisions all ran in the direction of the duty-risk analysis.

For example, two years later the supreme court handed down *Jones v. Robbins*.[57] The opinion is a *tour de force* by the court and an excellent example of the methodology in action. *Jones* was the sort of case that would have driven courts to distraction if they had to rummage through its facts searching for the chimerical "proximate cause." The case is important not because of the result (which could have very easily gone the other way, as illustrated by the dissenting opinion which arrived at a different conclusion using the same methodology), but because it demonstrates the court's fluency in employing the methodology.

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55. 260 La. at 549-51, 256 So. 2d at 622-23 (citations omitted) (quoting, Malone, *supra* note 12, at 73).

56. At this point the writer leaves *Hill*. For an analysis and discussion of that important case, see Robertson, *supra* note 4. With his usual insight, Professor Robertson saw the implications of *Hill* early on and published on the subject.

57. 289 So. 2d 104 (La. 1974).

In *Jones*, the father of a minor sued a service station owner and its employee for injuries resulting from burns received by his child when she ignited gasoline previously sold to her six-year-old half-sister by defendant's employee. The accident occurred approximately an hour and a half after the sale. The difficulty in the case was that the injuries occurred not to the six-year-old but to her four-year-old half-sister at a place and time somewhat removed from the transaction. Further complicating the analysis was the lack of supervision of the children, even though the child's mother was nearby watching television. The court first tackled the problem at step one of the methodology and determined that the sale of the gasoline was a cause-in-fact of the injuries to the four-and-a-half-year-old half-sister since, but for the defendant's furnishing the gasoline, the accident would have never occurred. The court then proceeded to step two and applied the duty-risk analysis to the problem. The court had little problem determining as a general proposition that a vendor of gasoline has a duty not to place it in the hands of those who by reason of age or other disabilities are unaware of its special and very dangerous propensities. The case would have been relatively easy if the six-year-old had been injured instead of her younger and equally incompetent half-sister, as the court recognized. "The second part of the question, and the more serious issue, is whether or not the duty not to place gasoline in the hands of an incompetent six year old child encompassed the risk of harm which came to her four year old half-sister."[58]

In its further analysis of the problem, the court openly admitted that the ease of association factor played a large part in its decision that the defendant's duty was broad enough to encompass the risk to which the plaintiff had been exposed.

> The act of placing the gasoline in the hands of this incompetent child carried with it full realization, or at least a requirement to realize, that the conduct of the small child with the dangerous substance involved an unreasonable risk of harm to others. Particularly included within the risk of harm to others is the fact that, with the expectation of child group play, an easily associated risk is that some other incompetent, by reason of tender age, would misbehave or would misuse the gasoline.[59]

The court candidly identified in its reasons for judgment two of the factors usually employed in the duty-risk analysis: type of activity (*i.e.*, selling gasoline to incompetents) and ease of association. While the reader might not agree with the emphasis placed on those factors in this decision, it is the court's acknowledgement of the factors that went into its decision that is important. The court then concluded:

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58. *Id.* at 107.
59. *Id.*

> The risk that the four year old half-sister would be injured through the possession of the gasoline by the incompetent six year old is exactly the kind of risk which the legal duty *we have imposed* on the attendant was designed to protect against. The duty not to place gasoline in the hands of an unsupervised incompetent six year old was designed not only to protect that child, but also to protect those whom she would likely expose to the danger of the highly flammable substance.[60]

What is significant about the italicized portions of the opinion is that the court did not push off its responsibility for visiting liability on the defendant under the guise of proximate cause. Instead, the court took the responsibility for its decision to impose liability upon the defendant after stating the precise reasons why it did so. In short, the opinion is not only candid but also courageous.

In 1976, the supreme court decided *Shelton v. Aetna Casualty & Surety Co.*[61] The opinion is interesting not only because it employed the methodology of duty-risk but also because it demonstrated the swiftness with which a court can dispose of a troublesome case with proper analysis. Defendant's mother, who had a usufruct over the defendant's property, slipped and fell in some "goo," the residue of paint remover used on a garage on the premises, which had collected on an adjacent footpath. In a classic application of duty-risk methodology, the court disposed of the cause-in-fact issue[62] as step one of the process and moved swiftly to step two to apply the duty-risk analysis. The court concluded that the defendant did owe a duty to the plaintiff, relying heavily on the precedent factor, or prior cases imposing a duty on the landowner to discover unreasonably dangerous conditions on the premises and to either correct or warn of their existence. But the court then concluded that the defendant had not breached the duty, inasmuch as there had been no showing that the condition created when the paint remover was washed off the garage was unreasonably dangerous. It is submitted, however, that the most interesting and important thing about the *Shelton* case is a short statement at the very beginning of the opinion which, to the writer's mind, disspelled any lingering doubts concerning the installment of the duty-risk methodology as the principal tool of tort law in Louisiana. Justice Calogero stated:

> Liability of a landowner under circumstances such as those involved in the instant case is based on the concept of fault under Article [sic] 2315 and 2316 of the Louisiana Civil Code. In order

60. *Id.* at 108 (emphasis added).
61. 334 So. 2d 406 (La. 1976).
62. *Id.* at 409.

> to determine whether liability exists under the facts of a particular case, this Court has adopted a duty-risk approach.[63]

By 1978, it was apparent that courts at the appellate level at least were both familiar and comfortable with the use of the methodology. It was at about this time that it became apparent that the courts, having adopted the methodology and having become familiar with its workings and application, were sure enough of themselves to test its flexibility as a tool in disposing of issues and reaching results which would have totally confounded a court bound to the unwieldy methodology of proximate cause.

In *Baumgartner v. State Farm Mutual Insurance Co.*,[64] the family of a pedestrian killed when struck by a vehicle at a cross-walk in the City of New Orleans sought damages from the driver's insurer. The opinion makes clear that the pedestrian was guilty of contributory negligence in that he was intoxicated at the time and that the defendant driver was reasonable in assuming that an ordinary pedestrian in possession of his faculties could complete the crossing timely. On that basis the lower appellate court denied the claim, but the supreme court reversed. It is obvious to the writer that the court was much troubled by the lack of mutuality of risk created by the conduct of the motorist and the pedestrian. In other words, in a clash between a car and a pedestrian, the pedestrian always loses. Under the old shibboleth of proximate cause the court would have probably deceitfully distorted the facts and arrived at the conclusion that "factually" the defendant motorist had the "last clear chance." However, committed as it was to the methodology of duty-risk, the court did not engage in systematic factual distortion to hide what it actually was doing. Using the duty-risk analysis, the court concluded that the defendant's duty extended to the protection of this plaintiff against his own carelessness and that therefore contributory negligence was no defense to the claim. It is certainly arguable that, after the passage of the comparative negligence statute, the decision in *Baumgartner* might very well be different since the court is no longer faced with a win-or-lose proposition but can apportion fault precisely between the parties. The whole rationale behind *Baumgartner* is that the court, balancing the lack of mutuality of risk against the fact that any amount of negligence on the part of the plaintiff would totally destroy his claim, decided to extend the duty of the driver to encompass that negligence. Take the factor of total destruction of the claim out of the picture, and the result could (and in the writer's opinion should) be quite different.

In all likelihood, the decision may well have come out the same by the employment of a doctrine of last clear chance, leaving future courts to go through the same charade of distorting the facts in order to achieve

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63. *Id.*

64. 356 So. 2d 400 (La. 1978).

the result in a similar case. Instead, the cards are on the table for all to see and criticize. The methodology leaves little room for subterfuge as to what the court is up to.

Within a year of *Baumgartner*, two more decisions came down, *Boyer v. Johnson*[65] and *Rue v. State*,[66] in which the court, utilizing the duty-risk analysis, imposed a standard of care upon the defendant broad enough to encompass what would otherwise be contributory negligence on the part of the plaintiff. *Boyer* involved a violation of various state statutes prohibiting the employment of a minor to drive a vehicle for commercial purposes. In violation of those statutes, the defendant hired the plaintiff's decedent minor who was killed when he negligently lost control of the van he was driving while making deliveries. Using the duty-risk analysis, the court concluded that the statute had been designed to prohibit minors from driving commercial vehicles in order to protect them from their own inability, which was the precise cause of this minor's death. Therefore, the ambit of the duty imposed by the statute upon the employer encompassed the risk that the minor's inability would cause him to negligently injure or kill himself.

Similarly, in *Rue* the Department of Highways was found to have negligently maintained the shoulder of one of its highways by permitting a large rut to exist. The plaintiff negligently permitted her vehicle to leave the traveled roadway. Doing so would have probably caused her no harm whatsoever except that she struck the rut and her vehicle overturned. Employing the duty-risk analysis, the supreme court reversed both lower courts and held that the Department's duty to the traveling public encompassed not only those who used the shoulder to stop but also those who inadvertently left the main travel portions of the highway and drove onto the shoulder. While one may disagree with the decision, the significance of all three of these decisions is that, instead of masking the court's intentions behind a charade of fact tortuously constructed from the evidence to fit it into one of the holes in the doctrine of proximate cause (such as sudden emergency, momentary forgetfulness, last clear chance, *etc.*), the methodology utilized by the court offered the opportunity for an honest and courageous statement of exactly why and what the court was doing and what it intended. This result was exactly the state of affairs envisioned by the producers of this doctrine or methodology.

Time and space prohibit an exploration of the impact and effect of the duty-risk methodology on the explosive development of jurisprudence under Civil Code articles 2317 through 2322.[67] That inquiry would be the

65. 360 So. 2d 1164 (La. 1978).

66. 372 So. 2d 1197 (La. 1979).

67. *See, e.g.*, Loescher v. Parr, 324 So. 2d 441 (La. 1975); Turner v. Bucher, 308 So. 2d 270 (La. 1975); Holland v. Buckley, 305 So. 2d 113 (La. 1974).

appropriate subject matter for an entire article. Suffice it for the purposes of this article to say that, observing the jurisprudence as it was first handed down and then developed from the standpoint of a practitioner, the writer believes that a strong case could be made for the proposition that "but for" the courts' adoption of the duty-risk methodology, they would never have been able to handle effectively the broad absolutes of liability stated in the code articles which, if applied literally, would spell socioeconomic disaster and result in administrative chaos for the courts.[68] In the writer's opinion, the reason these articles lay dormant for so long was precisely because the common-law doctrine of proximate cause simply was an ineffective and inadequate tool for the utilization and implementation of these articles. A careful analysis of this jurisprudence will demonstrate that, with the election by the supreme court in 1972 in the *Pierre* case to discard proximate cause and adopt the methodology of duty-risk, the courts were freed from the shackles of clothing their decisions of law with an illusion of fact under the rubric of proximate cause. An analysis of the jurisprudence under these articles reveals that the inherent flexibility of the methodology, coupled with the necessary acceptance by the courts of the philosophy of judicial realism in sculpturing their decisions, made possible and manageable the use of these long-neglected code articles. As a happy if unintended by-product of this development, the judiciary in Louisiana is moving closer and closer in its day-to-day functioning to the role of judge in the true civilian tradition.

For example, in the fairly recent case of *Entrevia v. Hood*,[69] a trespasser, who was injured when patently defective steps leading to an unoccupied farm house collapsed, sued the owner of the premises seeking imposition of liability under Civil Code articles 2317 and 2322. Literal application of those articles would have resulted in a judgment for the plaintiff. However, the flexibility and utility of the methodology of duty-risk permitted the court the freedom to render a reasoned, just decision under these articles. In the course of doing so, Justice Dennis,[70] in his usual penetrating manner, explained the role that the duty-risk methodology played in rendering these code articles manageable and useful. Justice Dennis also recognized the effect that the adoption of this methodology and the consequent acceptance of the philosophy of judicial realism was having in bringing the judiciary in this state more in line with civilian

68. For example, a literal application of article 2317, which renders a person liable for the damages caused by things which he has in his custody, would result in absolute liability for every automobile accident since obviously the defendant driver had the automobile in his custody when it struck plaintiff's automobile (and vice versa)!

69. 427 So. 2d 1146 (La. 1983).

70. A former student of Professor Malone and a classmate of the author.

notions of the proper functions of a judge. In reversing the lower appellate court's decision which had imposed liability and rendering judgment in favor of the defendant because the thing—the steps and the building—did not constitute an unreasonable risk of harm, Justice Dennis stated:

> The unreasonable risk of harm criterion, however, is not a simple rule of law which may be applied mechanically to the facts of a case. It is a concept employed by this court to symbolize the judicial process required by the civil code. Since Articles 2317 and 2322 state general precepts and not detailed rules for all concrete cases, it becomes the interpreter's duty to decide which risks are encompassed by the codal obligations from the standpoint of justice and social utility. . . .
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> Except in the clearest of cases, it is necessary for the judge, in shaping his decision about how the law applies to the facts, to consider the particular situation from the same standpoint as would a legislator regulating the matter. . . . Although the judge, unlike the legislator, is constrained by the concrete problem before him and the ambit of his limited authority, he nevertheless must consider the moral, social and economic values as well as the ideal of justice in reaching an intelligent and responsible decision. . . .
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> The judicial process involved in deciding whether a risk is unreasonable under Article 2317 is similar to that employed in determining whether a risk is unreasonable in a traditional negligence problem, . . . and in deciding the scope of duty or legal cause under the duty risk analysis.[71]

It is both interesting and important to note that Justice Dennis then cited two giants of judicial realism, Cardozo and Green, as authority for exactly the same proposition concerning the role and duty of judge advanced by Geny and found in the above quotation from the opinion. In doing so, he demonstrated the congruency of the philosophy of judicial realism as implemented by the methodology of duty-risk with civilian concepts of the role of a judge in society. This vision of the judiciary's role permitted the original redactors of the code to cast Civil Code articles 2317 and 2322 in general precepts and leave the development of the detailed rules in concrete cases to the capable hands of the judiciary, to decide within the constraints of the "concrete problem" before the court and the "ambit of its limited authority" with due consideration to the "moral, social and economic values as well as the ideal of justice in reaching an intelligent and responsible decision."[72]

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71. 427 So. 2d at 1149 (citations omitted).
72. *Id.*

DUTY-RISK ANALYSIS AT THE DISTRICT COURT LEVEL

It is the author's observation from the viewpoint of the practitioner that, while the district courts may preach duty-risk analysis, they more often than not practice proximate cause, particularly in jury cases. It is not uncommon for the author to receive at pretrial conferences the court's "general charge," the pattern of instructions usually given by that particular court in a jury case, and find contained therein definitions and instructions regarding proximate cause.

Frankly, prior to the addition of article 1810 of the Code of Civil Procedure by Act 699 of 1977 there was, practically speaking, no effective procedural device readily available at the district court level to implement the duty-risk methodology, particularly in the area where it was most needed, the jury trial.[73] With articles 1810 and 1811 of the Code of Civil Procedure providing the procedural tools of motions for directed verdict and motions for judgment notwithstanding the verdict, the district bench has at its fingertips the full panoply of procedural tools, combined with the evolution of the substantive law, to implement the methodology of the duty-risk analysis at the district level. While no case squarely says that the doctrine of proximate cause is dead, the duty-risk methodology's gradual supplanting of the doctrine of proximate cause over the past twenty-two years, coupled with Act 534 of 1983, leads the writer to the conclusion that today it is error to charge a jury on the doctrine of proximate cause. To be more specific, in the context of jury trials (which have become in the writer's experience more frequent in Louisiana over the past ten years), it is error for the district court to *operate* under the doctrine of proximate cause and pass on to the jury the legal determinations which the court should reserve for itself under the duty-risk analysis.

Prior to Act 534 of 1983, former article 1811(B) of the Code of Civil Procedure provided that "[i]n cases to recover damages for injury, death or loss, the court shall submit to the jury special written questions." Each question regarding fault was couched in terms of whether or not the fault of the party in question was a "proximate cause" of the damages allegedly sustained. By Act 534 of 1983 the legislature renominated the special verdict statute as article 1812, and among other changes, deliberately expunged the phrase "proximate cause" from the statute, substituting in every place where it appeared the phrase "legal cause," but without a definition of what was meant by that term.

Section 431(a) of the *Restatement (Second) of Torts* states that "[t]he actor's negligent conduct is a legal cause of harm to another if . . . his conduct is a substantial factor in bringing about the harm." The defini-

73. For an excellent discussion of the dilemma faced by the district courts prior to the enactment of article 1810, see 2 A. JOHNSON, LOUISIANA JURY INSTRUCTIONS—CIVIL 3-9 (1980).

tion is hauntingly familiar. As noted by Professor Johnson,[74] it is the same definition used by the supreme court in defining what is meant by cause in fact in step one of the duty-risk methodology.[75]

The problem is that, because of section 431(b),[76] legal cause as defined in the *Restatement (Second)* is merely a euphemism for proximate cause, as noted by Professor Johnson in his excellent analysis.[77] Indeed, as can be seen from the quotations from *Entrevia*, the courts have on occasions equated legal cause with the rule-making aspect of proximate cause[78] and on other occasions have used the terms interchangeably.

It is submitted that one must look at the expurgation of the term proximate cause in the context of the law of tort as it existed jurisprudentially as of the date of passage. It is hoped that this article has demonstrated the *denouement* of the doctrine of proximate cause and its replacement by duty-risk by the mid-seventies at the very latest. Given that jurisprudential fact, there appear to be three possible conclusions concerning the legislative intent in deliberately erasing the words proximate cause from the questions to be put to the jury as trier of fact and substituting the phrase legal cause. (1) The legislature engaged in a silly exercise of substituting synonyms for no apparent purpose. (2) The legislature always intended that the jury should decide all issues in the case, both law and fact, and for that reason first used the term proximate cause in Act 431 of 1979, which first introduced special verdicts. Seeing that its will had been ignored and flaunted by the courts thereafter, it wanted to re-enforce its position on this point (if consitutionally the legislature could invade the province of the judiciary and take away its interstitial law-making function at the district level); therefore the legislature reiterated its will by substituting the *Restatement (Second)* euphemism for proximate cause without comment as to its intent to repeal twenty-two years of jurisprudence since *Dixie Drive It Yourself*. (3) The change was made to eliminate the confusion the original verbiage could cause in the minds of the district bench confronted on the one hand by the

74. 2 A. JOHNSON, *supra* note 73, at 50.

75. Laird v. Travelers Ins. Co., 263 La. 199, 210, 267 So. 2d 714, 717-18 (1972) ("[W]hether it was a substantial factor without which the accident would not have occurred—that is, whether it had some direct relationship to the accident."); *Dixie Drive It Yourself*, 242 La. at 482, 137 So. 2d at 302 ("Negligent conduct is a cause-in-fact of harm to another if it was a substantial factor in bringing about that harm."); Perkins v. Texas & N.O. R.R., 243 La. 829, 835, 147 So. 2d 646, 648 (1962) ("Negligence is a cause in fact of the harm to another if it was a substantial factor in bringing about that harm.").

76. Section 431(b) of the *Restatement (Second) of Torts* provides that "[t]he actor's negligent conduct is a legal cause of harm to another if . . . there is no rule of law relieving the actor from liability because of the manner in which his negligence has resulted in the harm."

77. 2 A. JOHNSON, *supra* note 73, at 50.

78. Entrevia v. Hood, 427 So. 2d 1146, 1149 (La. 1983).

jurisprudence which favored the duty-risk analysis and on the other by the statute mandating that the jury be given the question of "proximate cause." In the writer's view, in the context of the Louisiana jurisprudence as it stood on the date of the enactment of this statute, section 431(b) of the *Restatement (Second)* was inoperative in Louisiana and had been so for many years. However, the definition in section 431(a) of the *Restatement (Second)* for legal cause annealed nicely with the courts' characterization of what was a cause in fact of harm and thus was selected to replace proximate cause. Given the proposition that all legislation must be construed so as to effectuate some substantive purpose and the corollary that there is a presumption that legislation passed was intended to have some legal effect, it is submitted that the most reasonable and plausible interpretation is number three, particularly when one realizes that the first part of each question provided in article 1812 of the Code of Civil Procedure asks the jury whether or not the party from whom damages are claimed was at fault. Only after that determination is the jury requested to make its determination as to cause.

## CONCLUSION

The Appendix contains a list of all state appellate cases since *Dixie Drive It Yourself* in 1962 which employed the methodology of duty-risk. The Appendix was compiled for a number of purposes in connection with this article. First, as a practitioner the writer has many times heard the complaint from colleagues whose clients' names appear to the left of "vs" that the duty-risk methodology favors the defense because it takes away from the jury issues which it used to decide under proximate cause. By the same token, some of my colleagues whose clientele are listed on the righthand side of the "vs" mutter darkly about the duty-risk methodology being a fiendishly clever plan to permit the judiciary to subvert the "law" and permit an ever-expanding ring of liability to surround their clients. To both sides, the writer submits that the facts and the results simply do not bear out either proposition. As can be seen by reference to the Appendix, the bottom line is that the proportion of judgments which fall on either side of "vs" is about fifty-fifty.[79]

79. Of course, this is a raw statistical count with no weighting for the qualitative nature of any judgment. Criticism can no doubt be raised on the basis, for example, that under duty risk the jury was reversed, while in the proximate cause methodology it would not have been, or that the judgments in favor of the plaintiff represented large extensions of liability from what previously existed. Still, the writer thought that the raw figures themselves do point out that neither side seems to have gained a substantial advantage statistically by the appellate courts' acceptance of the methodology. A survey of the prior 22 years when proximate cause prevailed seemed to the writer unrepresentative, given the two different time spans over a score of years with resulting sociological and economic changes. Therefore any figures derived for the prior 22 or so years would be comparing apples and oranges, in the writer's judgment.

A review of the cases listed in the Appendix as well as those discussed in the body of this article has compelled the writer to the conclusion that in the period of approximately twenty-two years since *Dixie Drive It Yourself* was decided, proximate cause as the driving force behind decision-making in the judiciary in this state has waned and died to be replaced by the methodology of duty-risk as first postulated by Green and espoused by Malone.

It is the observation of the writer as a practitioner that while the district courts preach the duty-risk analysis, they ofttimes practice proximate cause. This tendency of the courts at the district level to cling to proximate cause as the *modus operandi* in their day-to-day dealing with tort cases at bar on their docket stems not so much from sloth or the crush of business at the district level but from an inherent reluctance on the part of district judges to appear to be "making law" instead of interpreting it. However, as noted by Justice Dennis in *Entrevia*, the making of law on a limited interstitial basis bounded by the actual facts of the case at bar is precisely the function of a civilian judge. With the amendments to the Code of Civil Procedure from 1977 to 1983, district judges now have the full panoply of procedural tools to combine with the evolution of the substantive law to implement the duty-risk methodology at the district level. Indeed, if the writer's conclusions are correct, district court judges have a duty now to do so. This duty requires in the proper use of the methodology a separation of the fact questions from those of law, and an articulation of the reasons why the court at the district level on first impression has concluded that the defendant did indeed owe a duty to this particular plaintiff under these particular circumstances, or owed no duty despite the fact that the defendant's conduct did cause injury to the plaintiff. Then the appellate court on review can see precisely what the district judge who was intimately involved with the case had in mind in issuing his decision, thus making review easier (not to mention better communication between the judges in the trenches with those in the tower).

The utilization of the methodology and the discharging of those duties pose concomitant risks which have been discussed in some detail in the course of this article, *e.g.*, confusing cause in fact with duty and thereby taking this pure fact determination "out of neutral," to use Green's description of the analysis of cause in fact, and loading it with value judgments as to policy. The court must always be wary of the gravitational pull of out-of-date doctrines such as passive versus active negligence, intervening negligence, and last clear chance. There is a risk of confusing "ease of association" with the doctrine of "foreseeability," the latter playing a large part in the question of whether or not a particular defendant's conduct was substandard. As pointed out in the course of the article, ease of association has a much broader accommodation and application as one of the factors in determining whether there was a legal duty

to begin with. In short, there is a risk of employing twenty-twenty hindsight in making the determination whether this particular plaintiff's injuries were "easily associated with" the conduct of the defendant under scrutiny. There is a risk in this analysis of allowing the socioeconomic factor to degenerate into a synonym for the "deep pocket" theory of liability as between the parties in determining who should pay, without regard to the broader social and economic consequences that would flow from such a decision when applied in the future. Last but not least is the risk of not being able to find enough men and women with the judicial courage and intellectual integrity to man the benches of this state, rendering decisions by this methodology without fear or favor according to their best judgment as to what is ultimately "just," and then courageously giving the real reasons why one side or the other must accept a loss ofttimes running into thousands and hundred of thousands of dollars (an explanation owed to the loser out of consideration of civilized behavior and decency if not a simple notion of justice).

The question then becomes whether the duty of employing the duty-risk methodology is worth the risks discussed in this article. Or, to put it another way, is the game worth the candle?[80] In answer, the writer can not hope to improve upon the following observation made by Professor Green.

> The method of analysis developed in the foregoing pages does not purport to make the deciding of cases automatic or even easy. Its only purpose is to make the process rational—understandable—to strip it of hocus-pocus—to free our legal thought from the slavery of mocking phrases which defy analysis because they are empty. To know our problem is half the battle. To locate the points of weakness in a case is a step just short of its solution.[81]

It is submitted that any methodology which imposes upon the law-giver duties which, if met, generate the light of reason and understanding and spread it over the legal affairs of men is worth whatever risks that must be run to achieve that purpose. If it fails to do so, then to paraphrase Cassius's famous statement to Brutus, the fault, dear reader, lies not in the methodology nor even in the stars, but in ourselves.

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80. Professor Malone once remarked to the writer, perhaps facetiously, that Dean Prosser and he had concluded after a summer of discussion that all of tort law could be boiled down to this one juridical question.

81. L. GREEN, *supra* note 1, at 199.

# APPENDIX

[*Editor's note*: The search for cases discussing proximate cause and duty-risk covered the time period between January 15, 1962 and March 8, 1984.

The cases in this appendix employed duty risk and proximate cause methodologies, as indicated. However, it is left to the reader to determine the significance of causation issues to the outcome in each case.

The subsequent history of the reported cases is not given.]

## LOUISIANA SUPREME COURT CASES DISCUSSING PROXIMATE CAUSE AND DUTY-RISK

| | Cases | District Court | Court of Appeal | Supreme Court | Prevailing Party |
|---|---|---|---|---|---|
| 1. | Brown v. White, 430 So. 2d 16 (La. 1983) | Def. | Aff. | Rev. | Pl. |
| 2. | Carter v. City Parish Gov't., 423 So. 2d 1080 (La. 1982) | Def. | Aff. | Rev. | Pl. |
| 3. | Sanders v. Hercules Sheet Metal, Inc., 385 So. 2d 772 (La. 1980) | Def. | Rev. | Rev. | Def. |
| 4. | Rue v. State, 372 So. 2d 1197 (La. 1979) | Def. | Aff. | Rev. | Pl. |
| 5. | Thrasher v. Leggett, 373 So. 2d 494 (La. 1979) | Pl. | Rev. | Aff. | Def. |
| 6. | Boyer v. Johnson, 360 So. 2d 1164 (La. 1978) | Def. | Aff. | Rev. | Pl. |
| 7. | Gonzales v. Winn-Dixie La., 326 So. 2d 486 (La. 1976) | Pl. | Rev. | Rev. | Pl. |
| 8. | Green v. Taca Int'l Airlines, 304 So. 2d 357 (La. 1974) | Pl. | Aff. | Aff. | Pl. |
| 9. | Laird v. Travelers Ins. Co., 267 So. 2d 714 (La. 1972) | Pl. | Aff. | Aff. | Pl. |
| 10. | Hill v. Lundin & Assocs., Inc., 256 So. 2d 620 (La. 1972) | Def. | Rev. | Rev. | Def. |
| 11. | Pierre v. Allstate Ins. Co., 242 So. 2d 821 (La. 1970) | Def. | Aff. | Rev. | Pl. |
| | | | | Plaintiff— | 8 |
| | | | | Defendant— | 3 |

## LOUISIANA COURT OF APPEAL CASES DISCUSSING PROXIMATE CAUSE AND DUTY-RISK

| | Cases | District Court | Court of Appeal | Prevailing Party |
|---|---|---|---|---|
| 1. | Harris v. Pizza Hut, 445 So. 2d 756 (La. App. 4th Cir. 1984) | Pl. | Rev. | Def. |
| 2. | Mitchell v. South Cent. Bell, 442 So. 2d 876 (La. App. 3d Cir. 1983) | Pl. | Aff. | Pl. |
| 3. | Landry v. Bill Garrett Chevrolet, Inc., 443 So. 2d 1139 (La. App. 4th Cir. 1983) | Pl. | Aff. | Pl. |
| 4. | Jowers v. Commercial Union Ins. Co., 435 So. 2d 575 (La. App. 3d Cir. 1983) | Def. | Rev. | Pl. |

| | Cases | District Court | Court of Appeal | Prevailing Party |
|---|---|---|---|---|
| 5. | Jacoby v. State, 434 So. 2d 570 (La. App. 1st Cir. 1983) | Pl. | Rev. | Def. |
| 6. | Williams v. City of New Orleans, 433 So. 2d 1129 (La. App. 4th Cir. 1983) | Pl. | Aff. | Pl. |
| 7. | Dusenbery v. McMoran Exploration Co., 433 So. 2d 268 (La. App. 1st Cir. 1983) | Pl. | Aff. | Pl. |
| 8. | Brock v. New Orleans Pub. Serv., 433 So. 2d 1083 (La. App. 4th Cir. 1983) | Pl. | Aff. | Pl. |
| 9. | Lonergan v. New Orleans Pub. Serv., 430 So. 2d 213 (La. App. 4th Cir. 1983) | Pl. | Aff. | Pl. |
| 10. | Miller v. New Orleans Pub. Serv., 430 So. 2d 1103 (La. App. 4th Cir. 1983) | Def. | Aff. | Def. |
| 11. | Copeland v. Louisiana Dep't of Transp. & Dev., 428 So. 2d 1251 (La. App. 3d Cir. 1983) | Pl. | Aff. | Pl. |
| 12. | Palmer v. Bartley, Inc., 430 So. 2d 118 (La. App. 3d Cir. 1983) | Pl. | Rev. | Def. |
| 13. | Smith v. City of Kenner, 428 So. 2d 1171 (La. App. 5th Cir. 1983) | Def. | Aff. | Def. |
| 14. | Hills v. Skate Country E., Inc., 430 So. 2d 1035 (La. App. 4th Cir. 1983) | Pl. | Rev. | Def. |
| 15. | Garcia v. Jennings, 427 So. 2d 1329 (La. App. 2d Cir. 1983) | Def. | Rev. | Pl. |
| 16. | Illinois Cen. Gulf R.R. v. City of New Orleans, 426 So. 2d 1385 (La. App. 4th Cir. 1982) | Pl. | Aff. | Pl. |
| 17. | Brady v. Rivella Dev., 424 So. 2d 1104 (La. App. 1st Cir. 1982) | Pl. | Aff. | Pl. |
| 18. | Allen v. Housing Authority, 423 So. 2d 1291 (La. App. 4th Cir. 1982) | Pl. | Rev. | Def. |
| 19. | Coleman v. Douglas Pub. Serv., 423 So. 2d 1205 (La. App. 4th Cir. 1982) | Pl. | Aff. | Pl. |
| 20. | State Farm Mutual Auto. Ins. Co. v. Hoerner, 426 So. 2d 205 (La. App. 4th Cir. 1982) | Def. | Aff. | Def. |
| 21. | Hessifer v. Southern Equip., 416 So. 2d 368 (La. App. 1st Cir. 1982) | Pl. | Rev. | Def. |
| 22. | Chappetta v. Bowman Transp., 415 So. 2d 1019 (La. App. 4th Cir. 1982) | Pl. | Aff. | Pl. |
| 23. | Daniel v. St. Frances Cabrini Hosp., 415 So. 2d 586 (La. App. 3d Cir. 1982) | Pl. | Aff. | Pl. |
| 24. | Charles v. Lavergne, 412 So. 2d 726 (La. App. 3d Cir. 1982) | Def. | Aff. | Def. |
| 25. | Tilley v. Mt. Vernon Ins. Co., 411 So. 2d 72 (La. App. 3d Cir. 1982) | Def. | Aff. | Def. |
| 26. | Head v. St. Paul Fire & Marine Ins. Co., 408 So. 2d 1174 (La. App. 3d Cir. 1982) | Def. | Rev. | Pl. |
| 27. | Foster v. Houston Gen. Ins. Co., 407 So. 2d 759 (La. App. 2d Cir. 1982) | Pl. | Aff. | Pl. |
| 28. | Robillard v. P & R Race Tracks, 405 So. 2d 1203 (La. App. 1st Cir. 1981) | Def. | Aff. | Def. |
| 29. | Oliver v. Capitino, 405 So. 2d 1102 (La. App. 4th Cir. 1981) | Def. | Rev. | Pl. |

| | Cases | District Court | Court of Appeal | Prevailing Party |
|---|---|---|---|---|
| 30. | West v. United States Fidelty & Guar. Co., 405 So. 2d 877 (La. App. 4th Cir. 1981) | Def. | Aff. | Def. |
| 31. | Nelson v. Powers, 402 So. 2d 129 (La. App. 1st Cir. 1981) | Def. | Aff. | Def. |
| 32. | Truluck v. Clark, 401 So. 2d 1236 (La. App. 2d Cir. 1981) | Pl. | Rev. | Def. |
| 33. | Pierrotti v. Associate Indem. Corp., 399 So. 2d 679 (La. App. 1st Cir. 1981) | Pl. | Aff. | Pl. |
| 34. | Maryland v. Winn-Dixie, La., 393 So. 2d 316 (La. App. 1st Cir. 1980) | Pl. | Rev. | Def. |
| 35. | Robertson v. Travis, 393 So. 2d 304 (La. App. 1st Cir. 1980) | Def. | Rev. | Pl. |
| 36. | Gasquet v. Commercial Union Ins. Co., 391 So. 2d 466 (La. App. 4th Cir. 1980) | Def. | Rev. | Pl. |
| 37. | Cobb v. Lloyds, 387 So. 2d 13 (La. App. 3d Cir. 1980) | Pl. | Aff. | Pl. |
| 38. | Brooks v. Russel, 384 So. 2d 576 (La. App. 3d Cir. 1980) | Pl. | Aff. | Pl. |
| 39. | Solis v. Civic Center Site Dev. Co., 385 So. 2d 1229 (La. App. 4th Cir. 1980) | Def. | Aff. | Def. |
| 40. | Esta v. Dover Corp., 385 So. 2d 439 (La. App. 1st Cir. 1980) | Def. | Aff. | Def. |
| 41. | Gaudet v. G.D.C., Inc., 383 So. 2d 1289 (La. App. 1st Cir. 1980) | Def. | Aff. | Def. |
| 42. | Williams v. City of Alexandria, 376 So. 2d 367 (La. App. 3d Cir. 1979) | Def. | Aff. | Def. |
| 43. | Wall v. American Employers Ins. Co., 377 So. 2d 369 (La. App. 2d Cir. 1979) | Def. | Rev. | Pl. |
| 44. | Brandon v. State, 367 So. 2d 137 (La. App. 2d Cir. 1979) | Pl. | Aff. | Pl. |
| 45. | DeCastro v. Boylan, 367 So. 2d 83 (La. App. 4th Cir. 1979) | Def. | Aff. | Def. |
| 46. | Becnel v. St. John the Baptist Parish Police Jury, 364 So. 2d 1074 (La. App. 4th Cir. 1978) | Pl. | Rev. | Def. |
| 47. | Guillot v. State, 364 So. 2d 254 (La. App. 3d Cir. 1978) | Def. | Aff. | Def. |
| 48. | Duvigneaud v. Government Employees Ins. Co., 363 So. 2d 1292 (La. App. 4th Cir. 1978) | Pl. | Aff. | Pl. |
| 49. | Ainsworth v. Treadway, 361 So. 2d 957 (La. App. 4th Cir. 1978) | Def. | Aff. | Def. |
| 50. | Peltier v. Department of Highways, 357 So. 2d 897 (La. App. 1st Cir. 1978) | Pl. | Rev. | Def. |
| 51. | LeJeune v. Allstate Ins. Co., 356 So. 2d 537 (La. App. 3d Cir. 1978) | Pl. | Aff. | Pl. |
| 52. | Loraso v. Albritton, 354 So. 2d 230 (La. App. 4th Cir. 1978) | Def. | Aff. | Def. |
| 53. | Graham v. State, 354 So. 2d 602 (La. App. 1st Cir. 1977) | Def. | Aff. | Def. |
| 54. | Lochbaum v. Bowman, 353 So. 2d 379 (La. App. 4th Cir. 1977) | Pl. | Rev. | Def. |

| | Cases | District Court | Court of Appeal | Prevailing Party |
|---|---|---|---|---|
| 55. | Foss v. New Orleans Terminal Co., 351 So. 2d 193 (La. App. 4th Cir. 1977) | Pl. | Rev. | Def. |
| 56. | Betbeze v. Cherokee Nat'l Ins. Co., 345 So. 2d 577 (La. App. 4th Cir. 1977) | Pl. | Aff. | Pl. |
| 57. | Ogden v. Smith, 344 So. 2d 1099 (La. App. 3d Cir. 1977) | Def. | Rev. | Pl. |
| 58. | Murray v. Kuhn, 345 So. 2d 917 (La. App. 4th Cir. 1977) | Def. | Rev. | Pl. |
| 59. | Frank v. Pitre, 341 So. 2d 1376 (La. App. 3d Cir. 1977) | Pl. | Aff. | Pl. |
| 60. | Gansloser v. Kansas City S. Ry., 339 So. 2d 498 (La. App. 2d Cir. 1976) | Def. | Aff. | Def. |
| 61. | Mondello v. State, 338 So. 2d 730 (La. App. 3d Cir. 1976) | Pl. | Rev. | Def. |
| 62. | Landry v. Barreca, 332 So. 2d 594 (La. App. 4th Cir. 1976) | Pl. | Aff. | Pl. |
| 63. | Richardson v. Winn-Dixie, La., 327 So. 2d 613 (La. App. 4th Cir. 1976) | Pl. | Aff. | Pl. |
| 64. | Shelton v. Aetna Casualty & Surety Co., 322 So. 2d 308 (La. App. 1st Cir. 1975) | Def. | Aff. | Def. |
| 65. | Gore v. Miller, 311 So. 2d 894 (La. App. 3d Cir. 1975) | Pl. | Aff. | Pl. |
| 66. | Godeau v. Roadway Express, Inc., 299 So. 2d 915 (La. App. 3d Cir. 1974) | Def. | Aff. | Def. |
| 67. | Rosenberger v. Central La. Dist. Livestock Show, 300 So. 2d 626 (La. App. 3d Cir. 1974) | Pl. | Rev. | Def. |
| 68. | Stewart v. Gibson Prods. Co., 300 So. 2d 870 (La. App. 3d Cir. 1974) | Pl. | Rev. | Def. |
| 69. | Simmons v. Travelers Ins. Co., 295 So. 2d 550 (La. App. 3d Cir. 1974) | Pl. | Aff. | Pl. |
| 70. | Laird v. State Farm Ins. Co., 290 So. 2d 343 (La. App. 4th Cir. 1974) | Def. | Rev. | Pl. |
| 71. | Hernandez v. Toney, 389 So. 2d 318 (La. App. 1st Cir. 1973) | Def. | Rev. | Pl. |
| 72. | Baker v. D.H. Holmes Co., 285 So. 2d 282 (La. App. 4th Cir. 1973) | Pl. | Aff. | Pl. |
| 73. | Craig v. Burch, 228 So. 2d 723 (La. App. 1st Cir. 1969) | Def. | Rev. | Pl. |

Plaintiff— 38
Defendant— 35

## LOUISIANA SUPREME COURT CASES DISCUSSING DUTY-RISK

| | Cases | District Court | Court of Appeal | Supreme Court | Prevailing Party |
|---|---|---|---|---|---|
| 1. | PPG Industries v. Bean Dredging, 447 So. 2d 1058 (La. 1984) | Def. | Aff. | Aff. | Def. |
| 2. | Karl J. Pizzalotto, M.D., Ltd. v. Wilson, 437 So. 2d 859 (La. 1983) | Def. | Aff. | Rev. | Pl. |

| | Cases | District Court | Court of Appeal | Supreme Court | Prevailing Party |
|---|---|---|---|---|---|
| 3. | Smith v. Travelers Ins. Co., 430 So. 2d 55 (La. 1983) | Def. | Aff. | Rev. | Pl. |
| 4. | Entrevia v. Hood, 427 So. 2d 1146 (La. 1983) | Def. | Rev. | Rev. | Def. |
| 5. | Hebert v. Gulf States Utils. Co., 426 So. 2d 111 (La. 1983) | Def. | Aff. | Rev. | Pl. |
| 6. | Jenkins v. St. Paul Fire & Marine Ins. Co., 422 So. 2d 1109 (La. 1982) | Pl. | Rev. | Aff. | Def. |
| 7. | LeBlanc v. State, 419 So. 2d 853 (La. 1982) | Pl. | Rev. | Rev. | Pl. |
| 8. | Kent v. Gulf States Utils. Co., 418 So. 2d 493 (La. 1982) | Pl. | Rev. | Aff. | Def. |
| 9. | Rodriguez v. New Orleans Pub. Serv., 400 So. 2d 884 (La. 1981) | Pl. | Aff. | Rev. | Def. |
| 10. | Dornak v. Lafayette Gen. Hosp., 399 So. 2d 168 (La. 1981) | Def. | Aff. | Rev. | Pl. |
| 11. | Hunt v. City Stores, 387 So. 2d 585 (La. 1980) | Pl. | Aff. | Aff. | Pl. |
| 12. | Daniels v. Conn, 382 So. 2d 945 (La. 1980) | Pl. | Aff. | Aff. | Pl. |
| 13. | LeJeune v. Allstate Ins. Co., 365 So. 2d 471 (La. 1978) | Pl. | Aff. | Aff. | Pl. |
| 14. | Shelton v. Aetna Casualty & Surety Co., 334 So. 2d 406 (La. 1976) | Def. | Aff. | Aff. | Def. |
| 15. | Jones v. Robbins, 289 So. 2d 104 (La. 1974) | Def. | Aff. | Rev. | Pl. |
| 16. | Lisonbee v. Chicago Mill & Lumber Co., 278 So. 2d 5 (La. 1973) | Def. | Aff. | Aff. | Def. |
| 17. | Griffis v. Travelers Ins. Co., 273 So. 2d 523 (La. 1973) | Def. | Aff. | Aff. | Def. |
| 18. | Weber v. Phoenix Assurance Co., 273 So. 2d 30 (La. 1973) | Pl. | Rev. | Aff. | Def. |
| 19. | Ramp v. St. Paul Fire & Marine Ins. Co., 269 So. 2d 239 (La. 1972) | Def. | Rev. | Aff. | Pl. |
| 20. | Leake v. Prudhomme Truck Tank Serv., 258 So. 2d 358 (La. 1971) | Pl. | Rev. | Rev. in part | Def. |
| 21. | Langlois v. Allied Chemical Corp., 249 So. 2d 133 (La. 1971) | Pl. | Rev. | Rev. | Pl. |
| | | | | Plaintiff— | 11 |
| | | | | Defendant— | 10 |

## LOUISIANA COURT OF APPEAL CASES DISCUSSING DUTY-RISK

| | Cases | District Court | Court of Appeal | Prevailing Party |
|---|---|---|---|---|
| 1. | Parr v. Head, 442 So. 2d 1234 (La. App. 5th Cir. 1983) | Pl. | Rev. | Def. |
| 2. | Miller v. McDonald's Corp., 439 So. 2d 561 (La. App. 1st Cir. 1983) | Def. | Rev./ Rem. | Pl. |

| | Cases | District Court | Court of Appeal | Prevailing Party |
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| 3. | Pinkney v. Miller, 439 So. 2d 1113 (La. App. 4th Cir. 1983) | Pl. | Rev. | Def. |
| 4. | Blackwell v. Oser, 436 So. 2d 1293 (La. App. 4th Cir. 1983) | Pl. | Aff. | Pl. |
| 5. | Larson v. Huskey, 440 So. 2d 769 (La. App. 4th Cir. 1983) | Pl. | Aff. | Pl. |
| 6. | Jowers v. Commercial Union Ins. Co., 435 So. 2d 575 (La. App. 3d Cir. 1983) | Def. | Rev. | Pl. |
| 7. | Crowe v. Hoover, 434 So. 2d 1231 (La. App. 1st Cir. 1983) | Def. | Aff. | Def. |
| 8. | Dulaney v. Travelers Ins. Co., 434 So. 2d 578 (La. App. 1st Cir. 1983) | Def. | Rev. | Pl. |
| 9. | Jacoby v. State, 434 So. 2d 570 (La. App. 1st Cir. 1983) | Pl. | Rev. | Def. |
| 10. | Williams v. City of New Orleans, 433 So. 2d 1129 (La. App. 4th Cir. 1983) | Pl. | Aff. | Pl. |
| 11. | Robinson v. Gulf Ins. Co., 434 So. 2d 487 (La. App. 2d Cir. 1983) | Def. | Aff. | Def. |
| 12. | Maltzahn v. City of New Orleans, 433 So. 2d 417 (La. App. 4th Cir. 1983) | Def. | Aff. | Def. |
| 13. | Acadian Heritage Realty v. City of Lafayette, 434 So. 2d 182 (La. App. 3d Cir. 1983) | Pl. | Aff. | Pl. |
| 14. | Broussard v. Continental Oil Co., 433 So. 2d 354 (La. App. 3d Cir. 1983) | Def. | Aff. | Def. |
| 15. | Dusenbery v. McMoran Exploration Co., 433 So. 2d 268 (La. App. 1st Cir. 1983) | Pl. | Aff. | Pl. |
| 16. | Bays v. Lee, 432 So. 2d 941 (La. App. 4th Cir. 1983) | Pl. | Aff. | Pl. |
| 17. | Brock v. New Orleans Pub. Serv., 433 So. 2d 1083 (La. App. 4th Cir. 1983) | Pl. | Aff. | Pl. |
| 18. | Phillips v. Roy, 431 So. 2d 849 (La. App. 2d Cir. 1983) | Def. | Rev. | Pl. |
| 19. | Smith v. Reliance Ins. Co., 431 So. 2d 907 (La. App. 2d Cir. 1983) | Def. | Aff. | Def. |
| 20. | LeBlanc v. Wall, 430 So. 2d 1130 (La. App. 1st Cir. 1983) | Def. | Aff. | Def. |
| 21. | Thibodeaux v. Central La. Elec. Co., 428 So. 2d 1269 (La. App. 3d Cir. 1983) | Def. | Aff. | Def. |
| 22. | Belman v. St. Frances Cabrini Hosp., 427 So. 2d 541 (La. App. 3d Cir. 1983) | Pl. | Aff. | Pl. |
| 23. | Ciko v. City of New Orleans, 427 So. 2d 80 (La. App. 4th Cir. 1983) | Def. | Aff. | Def. |
| 24. | Ronstadt v. Begnaud Motors, 427 So. 2d 911 (La. App. 3d Cir. 1983) | Def. | Aff. | Def. |
| 25. | Chiasson v. Whitney, 427 So. 2d 470 (La. App. 5th Cir. 1983) | Pl. | Aff. | Pl. |
| 26. | Sampy v. Roy Young, Inc., 425 So. 2d 284 (La. App. 3d Cir. 1982) | Pl. | Aff. | Pl. |
| 27. | Hughes v. Buccaneer Wash & Dry Cleaning Center, 423 So. 2d 1282 (La. App. 4th Cir. 1982) | Pl. | Aff. | Pl. |

| | Cases | District Court | Court of Appeal | Prevailing Party |
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| 28. | Kemp v. Hudnall, 423 So. 2d 1260 (La. App. 1st Cir. 1982) | Def. | Aff. | Def. |
| 29. | Sullivan v. Ekco Prod., 434 So. 2d 74 (La. App. 5th Cir. 1982) | Def. | Aff. | Def. |
| 30. | Burnell v. Sportran Transit Sys. Co., 421 So. 2d 1199 (La. App. 2d Cir. 1982) | Def. | Rev. | Pl. |
| 31. | Epting v. HDO, Inc., 422 So. 2d 461 (La. App. 2d Cir. 1982) | Def. | Aff. | Def. |
| 32. | Frain *ex rel.* Beason v. State Farm Ins. Co., 421 So. 2d 1169 (La. App. 2d Cir. 1982) | Def. | Rev. | Pl. |
| 33. | B. Olinde & Sons Co. v. State, 421 So. 2d 370 (La. App. 1st Cir. 1982) | Def. | Aff. | Def. |
| 34. | Kimball v. St. Paul Ins. Co., 421 So. 2d 309 (La. App. 1st Cir. 1982) | Def. | Aff. | Def. |
| 35. | Cooperider v. Dearth, 420 So. 2d 220 (La. App. 4th Cir. 1982) | Pl. | Aff. | Pl. |
| 36. | Guillory v. Audubon Ins. Co., 417 So. 2d 892 (La. App. 3d Cir. 1982) | Pl. | Rev. | Def. |
| 37. | Doyen v. Cessna Aircraft Co., 416 So. 2d 1337 (La. App. 3d Cir. 1982) | Def. | Aff. | Def. |
| 38. | Meche v. Gulf States Utils. Co., 416 So. 2d 1316 (La. App. 3d Cir. 1982) | Def. | Aff. | Def. |
| 39. | Sumner v. Foremost Ins. Co., 417 So. 2d 1327 (La. App. 3d Cir. 1982) | Def. | Aff. | Def. |
| 40. | Verrett v. Cameron Tel. Co., 417 So. 2d 1319 (La. App. 3d Cir. 1982) | Def. | Rev. | Pl. |
| 41. | Bradley v. Tripkovich, 415 So. 2d 999 (La. App. 4th Cir. 1982) | Pl. | Aff. | Pl. |
| 42. | Roark v. St. Paul Fire & Marine Ins. Co., 415 So. 2d 295 (La. App. 2d Cir. 1982) | Def. | Aff. | Def. |
| 43. | Barcia v. Estate of Keil, 413 So. 2d 241 (La. App. 4th Cir. 1982) | Def. | Aff. | Def. |
| 44. | Dye v. Kean's, 412 So. 2d 116 (La. App. 1st Cir. 1982) | Def. | Aff. | Def. |
| 45. | Guillory v. Employers Mut. Liab. Ins. Co., 411 So. 2d 504 (La. App. 1st Cir. 1982) | Def. | Aff. | Def. |
| 46. | Womack v. Willis-Knighton Clinic, 412 So. 2d 629 (La. App. 2d Cir. 1982) | Def. | Aff. | Def. |
| 47. | Freeman v. Lee & Leon Oil Co., 409 So. 2d 408 (La. App. 4th Cir. 1982) | Def. | Rev. | Pl. |
| 48. | Parish v. New Orleans Pub. Serv., 408 So. 2d 17 (La. App. 4th Cir. 1981) | Pl. | Aff. | Pl. |
| 49. | Kaplan v. Missouri-Pac. R.R., 409 So. 2d 298 (La. App. 3d Cir. 1981) | Def. | Aff. | Def. |
| 50. | Poche v. Maryland Casualty Co., 407 So. 2d 1237 (La. App. 4th Cir. 1981) | Def. | Aff. | Def. |
| 51. | Smith v. Louisiana Cement Co., 405 So. 2d 687 (La. App. 4th Cir. 1981) | Def. | Aff. | Def. |
| 52. | Knockum v. Amoco Oil Co., 402 So. 2d 90 (La. App. 1st Cir. 1980) | Pl. | Aff. | Pl. |

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| 53. | Williams v. Aetna Ins. Co., 402 So. 2d 192 (La. App. 1st Cir. 1981) | Pl. | Aff. | Pl. |
| 54. | Wilson v. Aetna Casualty & Sur. Co., 401 So. 2d 500 (La. App. 2d Cir. 1981) | Pl. | Aff. | Pl. |
| 55. | Liedtke v. Allstate Ins., Co., 405 So. 2d 859 (La. App. 3d Cir. 1981) | Def. | Aff. | Def. |
| 56. | Matthews v. Elder Int'l, 400 So. 2d 251 (La. App. 4th Cir. 1981) | Def. | Aff. | Def. |
| 57. | Martinez v. Modenbach, 396 So. 2d 471 (La. App. 4th Cir. 1981) | Def. | Aff. | Def. |
| 58. | Taylor v. Murphy, 396 So. 2d 440 (La. App. 4th Cir. 1981) | Def. | Aff. | Def. |
| 59. | Ross v. Central La. State Hosp., 392 So. 2d 698 (La. App. 3d Cir. 1980) | Def. | Aff. | Def. |
| 60. | Pennington v. Church's Fried Chicken, Inc., 393 So. 2d 360 (La. App. 1st Cir. 1980) | Pl. | Rev. | Def. |
| 61. | Smith v. New Orleans Pub. Serv., 391 So. 2d 962 (La. App. 4th Cir. 1980) | Pl. | Aff. | Pl. |
| 62. | Payn v. West Jefferson Gen. Hosp., 385 So. 2d 40 (La. App. 4th Cir. 1980) | Def. | Rev. | Pl. |
| 63. | Albritton v. J.C. Penney Co., 385 So. 2d 549 (La. App. 3d Cir. 1980) | Def. | Rev. | Pl. |
| 64. | Giles v. Humble Oil & Ref. Co., 384 So. 2d 569 (La. App. 4th Cir. 1980) | Pl. | Rev. | Def. |
| 65. | Lucas v. DeVille, 385 So. 2d 804 (La. App. 3d Cir. 1979) | Def. | Rev. | Pl. |
| 66. | Davis v. Moreau, 381 So. 2d 1297 (La. App. 4th Cir. 1980) | Def. | Aff. | Def. |
| 67. | Breithaupt v. Sellers, 380 So. 2d 1257 (La. App. 3d Cir. 1980) | Def. | Aff. | Def. |
| 68. | Dore v. Cunningham, 376 So. 2d 360 (La. App. 3d Cir. 1979) | Def. | Aff. | Def. |
| 69. | Olinde v. American Employers Ins. Co., 376 So. 2d 1027 (La. App. 1st Cir. 1979) | Def. | Aff. | Def. |
| 70. | Brown v. New Orleans Pub. Serv., 376 So. 2d 176 (La. App. 4th Cir. 1979) | Pl. | Rev. | Def. |
| 71. | Butler v. Continental Ins. Co., 374 So. 2d 170 (La. App. 4th Cir. 1979) | Def. | Aff. | Def. |
| 72. | Broyles v. Yarbrough, 374 So. 2d 705 (La. App. 1st Cir. 1979) | Def. | Aff. | Def. |
| 73. | Steele v. St. Paul Fire & Marine Ins. Co., 371 So. 2d 843 (La. App. 3d Cir. 1979) | Def. | Rev. | Pl. |
| 74. | Kane v. Braquet, 368 So. 2d 1176 (La. App. 3d Cir. 1979) | Def. | Aff. | Def. |
| 75. | Daniel v. Cambridge Mut. Fire Ins. Co., 368 So. 2d 810 (La. App. 2d Cir. 1979) | Pl. | Rev. | Def. |
| 76. | LaFleur v. City of Ville Platte, 367 So. 2d 121 (La. App. 3d Cir. 1979) | Pl. | Aff. | Pl. |
| 77. | Richard v. Sonnier, 363 So. 2d 961 (La. App. 3d Cir. 1978) | Def. | Aff. | Def. |
| 78. | Normand v. City of New Orleans, 363 So. 2d 1220 (La. App. 4th Cir. 1978) | Def. | Aff. | Def. |

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| 79. | McLaughlin v. Home Indem. Ins. Co., 361 So. 2d 1227 (La. App. 1st Cir. 1978) | Def. | Rev. | Pl. |
| 80. | State Farm Mut. Auto. Ins. Co. v. South Cent. Bell Tel. Co., 359 So. 2d 1318 (La. App. 4th Cir. 1978) | Pl. | Aff. | Pl. |
| 81. | Allen v. Humble Oil & Ref. Co., 359 So. 2d 218 (La. App. 1st Cir. 1978) | Pl. | Rev. | Def. |
| 82. | Outlaw v. Bituminous Ins. Co., 357 So. 2d 1350 (La. App. 4th Cir. 1978) | Pl. | Aff. | Pl. |
| 83. | Carter v. Salter, 351 So. 2d 312 (La. App. 3d Cir. 1977) | Def. | Rev. | Pl. |
| 84. | Owens v. New Orleans Bldg. Maintenance, 349 So. 2d 494 (La. App. 4th Cir. 1977) | Pl. | Aff. | Pl. |
| 85. | Lacour v. Cumis Ins. Soc'y, 349 So. 2d 953 (La. App. 1st Cir. 1977) | Def. | Aff. | Def. |
| 86. | Smith v. Quality Transp., 346 So. 2d 787 (La. App. 1st Cir. 1977) | Def. | Aff. | Def. |
| 87. | Yates v. Brown, 344 So.2d 37 (La. App. 4th Cir. 1977) | Def. | Aff. | Def. |
| 88. | State Farm Mut. Ins. Co. v. South Cent. Bell Tel. Co., 343 So. 2d 758 (La. App. 3d Cir. 1977) | Def. | Aff. | Def. |
| 89. | Shelmire v. Linton, 343 So. 2d 301 (La. App. 1st Cir. 1977) | Pl. | Aff. | Pl. |
| 90. | Moore v. Southland Corp., 340 So. 2d 703 (La. App. 3d Cir. 1976) | Pl. | Aff. | Pl. |
| 91. | Werner v. Patriot Gen. Ins. Co., 339 So. 2d 948 (La. App. 4th Cir. 1976) | Def. | Aff. | Def. |
| 92. | Vidrine v. Missouri Farm Ass'n, 339 So. 2d 877 (La. App. 3d Cir. 1976) | Def. | Aff. | Def. |
| 93. | Skipper v. New Orleans Pub. Serv., 338 So.2d 771 (La. App. 4th Cir. 1976) | Pl. | Aff. | Pl. |
| 94. | Leonard v. Albany Mach. & Supply Co., 339 So.2d 458 (La. App. 1st Cir. 1976) | Pl. | Rev. | Def. |
| 95. | Molaison v. West Bros., 338 So.2d 726 (La. App. 1st Cir. 1976) | Pl. | Aff. | Pl. |
| 96. | Spencer v. Burglass, 337 So. 2d 596 (La. App. 4th Cir. 1976) | Def. | Aff. | Def. |
| 97. | Moreau v. State, 333 So. 2d 281 (La. App. 1st Cir. 1976) | Pl. | Aff. | Pl. |
| 98. | Woodward v. First of Ga. Ins. Co., 333 So. 2d 709 (La. App. 2d Cir. 1976) | Def. | Rev. | Pl. |
| 99. | Calecas v. Great Atl. & Pac. Tea Co., 330 So. 2d 619 (La. App. 4th Cir. 1976) | Pl. | Aff. | Pl. |
| 100. | Prattini v. Whorton, 326 So. 2d 576 (La. App. 4th Cir. 1976) | Pl. | Aff. | Pl. |
| 101. | Wunstell v. Crochet, 325 So. 2d 727 (La. App. 4th Cir. 1976) | Def. | Aff. | Def. |
| 102. | Brazell v. Groh, 323 So. 2d 530 (La. App. 4th Cir. 1975) | Def. | Aff. | Def. |
| 103. | Leftwich v. Molony, 322 So.2d 438 (La. App. 4th Cir. 1975) | Def. | Rev. | Pl. |

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| 104. | Thomas v. Hanover Ins. Co., 321 So. 2d 30 (La. App. 3d Cir. 1975) | Pl. | Aff. | Pl. |
| 105. | Lee v. Vidrine, 316 So. 2d 402 (La. App. 3d Cir. 1975) | Def. | Aff. | Def. |
| 106. | Ayala v. Bailey Elec. Co., 318 So. 2d 645 (La. App. 4th Cir. 1975) | Pl. | Aff. | Pl. |
| 107. | Linnear v. Wilson, 312 So. 2d 685 (La. App. 2d Cir. 1975) | Def. | Aff. | Def. |
| 108. | Haas v. Southern Farm Bureau Casualty Ins. Co., 321 So. 2d 380 (La. App. 4th Cir. 1975) | Pl. | Aff. | Pl. |
| 109. | Farr v. Johnson, 308 So. 2d 884 (La. App. 2d Cir. 1975) | Pl. | Aff. | Pl. |
| 110. | Holland v. Keaveney, 306 So. 2d 838 (La. App. 4th Cir. 1975) | Pl. | Rev. | Def. |
| 111. | Mixon v. Allstate Ins. Co., 300 So.2d 232 (La. App. 2d Cir. 1974) | Def. | Rev. | Pl. |
| 112. | State Farm Mut. Auto. Ins. Co. v. Richard, 296 So. 2d 373 (La. App. 3d Cir. 1974) | Pl. | Aff. | Pl. |
| 113. | Shaw v. Travelers Ins. Co., 293 So. 2d 568 (La. App. 3d Cir. 1974) | Pl. | Aff. | Pl. |
| 114. | Landry v. Nusloch, 297 So. 2d 759 (La. App. 4th Cir. 1974) | Def. | Rev. | Pl. |
| 115. | Abshire v. Hartford Accident & Indem. Ins. Co., 289 So. 2d 545 (La. App. 3d Cir. 1974) | Def. | Rev. | Pl. |

Plaintiff— 54
Defendant— 61

Combined Total
Plaintiff—111
Defendant—109